S. HRG. 100-363

PROPOSALS TO REORGANIZE THE NUCLEAR REGULATORY COMMISSION

HEARING

BEFORE THE

SUBCOMMITTEE ON NUCLEAR REGULATION

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON S. 14, S. 100, S. 908, S. 1769, AND S. 1770—PROPOSALS TO REORGANIZE THE NUCLEAR REGULATORY COMMISSION

OCTOBER 29, 1987

Printed for the use of the Committee on Environment and Public Works

U.S. GOVERNMENT PRINTING OFFICE

80-156 WASHINGTON : 1988

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

5321-20

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PROPOSALS TO REORGANIZE THE NUCLEAR REGULATORY COMMISSION

THURSDAY, OCTOBER 29, 1987

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON NUCLEAR REGULATION,
Washington, DC.

The subcommittee met at 9:34 a.m., in room SD–406, Dirksen Senate Office Building, Hon. John B. Breaux (chairman of the subcommittee) presiding.

Present: Senators Breaux, Reid, Simpson, and Symms.

OPENING STATEMENT OF HON. JOHN B. BREAUX, U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator BREAUX. The subcommittee will please come to order. This morning, the Subcommittee on Nuclear Regulation meets to receive testimony on a number of legislative proposals pending before it proposing structural and organizational changes to the Nuclear Regulatory Commission. I would note that this hearing is the tenth hearing held by this Subcommittee this year that has acquired testimony from our Commissioners.

During the previous nine hearings and one other that has involved the Commission staff, the Subcommittee has examined a broad range of issues concerning virtually every activity of the Commission. The issue that will be shortly presented to the subcommittee concerns whether what we have learned during this year speaks to the need for enacting some of these proposals. My personal belief is that our previous hearings do, in fact, spell out the need for some changes.

I am not satisfied with the operation of the Commission's Office of Inspector and Auditor; I am not satisfied that the Commission is capable, over the long haul, of maintaining the proper balance and relationship between its regulatory and investigative functions as those functions relate to potential wrongdoing by the Commission licensees.

I am not satisfied that the Commission is capable of developing a sound, regulatory and enforcement posture that will restore public confidence in nuclear power. I have doubts as to whether the Commission format, in and of itself, makes sense any longer. Having said this much, I will be the first to admit that new structures and new organizations are not a panacea.

It would be foolish of me to suggest that the remedy to the problem of this agency can be wholly addressed through legislative fiat.

However, I believe that a better system of checks and balances within the agency is necessary and is desirable. One of our tasks lies in finding that better system. Our second task involves vigorous oversight. I believe such oversight has occurred in our hearings this year.

In closing, I want to express my appreciation to our Subcommittee's Ranking member, Senator Alan Simpson, who, incidentally, is on his way and will be here shortly. Without his support and his guidance in the effort that we have made this year, it would have been most difficult, if not impossible. I certainly look forward to our continuing working relationship as we proceed to a legislative recommendation to the Full Committee.

We are pleased this morning to welcome as our first witnesses our two distinguished colleagues, Senator Biden and Senator Evans. We will hear from them and receive their testimony. Senator Biden?

STATEMENT OF HON. JOSEPH R. BIDEN, JR., U.S. SENATOR FROM THE STATE OF DELAWARE

Senator BIDEN. Thank you, Mr. Chairman. I thank you for allowing us to go so early. First, I am about to go down two floors and chair a hearing on some judges that are interesting and hopefully, we can do our job as expeditiously as you are doing yours.

Mr. Chairman, and members of the Committee who will hopefully read the record, a little over 16 months ago, I testified before this Subcommittee on my bill to establish an independent safety board for the Nuclear Regulatory Commission. In that testimony, I discussed several steps that the NRC had taken during the previous few years that to me, at least, indicated a dangerous drift away from safety as the top priority.

In the intervening months, the case has become clearer to me that the NRC is a troubled agency and that public confidence in the NRC is dropping and that reform of the NRC structure is needed to reverse this situation. We have to stop assuming that the NRC can pull itself out of this quagmire through internal changes.

The present structure has been described as unworkable and, by most accounts, attempts to address major problems by tinkering around the edges. This tinkering, in my view, has not met with such success.

Questions of accountability of decision-makers, commitment to safety as a top priority and regulatory toughness remain unchanged today as they have for years.

I would like to make that point clear. Many of the controversies surrounding the Commission today are not new. They are not unique to this Commission, and they are not the result, as some, particularly some who share my view on this bill and other criticisms of the nuclear industry generally and the NRC specifically, they are not, the result of this President's appointments but of the Commission structure itself.

So my remarks today are not directed at any Commissioner, a past Commissioner or the make-up of the present Commission. It relates to the structure, and it has been a problem that has existed for as long as I have been a Senator.

The debate has made that critical jump from where it was 18 months ago when I was here last as to whether the NRC needs to be reformed to how will it be reformed. From what I have read and know of this Subcommittee's work, that seems to me the path that you all are on.

I note that the Ranking member, Senator Simpson, has introduced one bill to change the NRC Commission to a single administrator and another bill to establish an Inspector General for the agency. So the pieces, are coming together for a package of meaningful reform in a most troubled agency.

We have the unique opportunity, or to be more specific, you have the unique opportunity to make these reforms, and I think that you and, quite frankly, the whole Senate should take advantage of it.

The focus of my actions with regard to the NRC have been on the accident investigation and safety follow-up practices of the agency. I don't pretend to be an expert, as you are and Senator Simpson and others on this committee are, Mr. Chairman. But I have, out of necessity, spent a great deal of time looking at the accident investigation safety follow-up practices of the agency.

It was my concern about the NRC's investigation of the 1983 accident at the Salem plant across the river from my home town, and I must plead, as one of our former brethren said, that all politics is local. Well, when I sit in the third floor window of my home, I can see the Salem nuclear power plant as clear as a bell from my window, and I must admit that it has focused my attention in ways that maybe it wouldn't be if I were 150 miles from it.

The 1983 accident at the Salem plant across the river from my home town of Wilmington led me to introduce the safety board bill back in the 99th Congress, and again in this Congress. But the need for a safety board has roots that predate the Salem event. The Kemeny Commission, in its report in the 1979 accident at Three Mile Island, noted a need for an "oversight committee for the nuclear safety."

This deficiency has continued after Salem. In 1985, a report prepared by Brookhaven National Laboratory called for "an investigatory system patterned after the National Transportation Safety Board—to determine the cause of events and recommend improvements."

To be sure, the NRC has taken some steps to address the concern raised by these reports. Most recently, in response to the Brookhaven report, the NRC established two levels of teams of investigation, one for the most serious-looking incidents at nuclear reactors. The worst of these would be investigated by the Incident Investigation Team, the IIT.

In the first six months of this new program, three IIT investigations were organized. In the same six months, three low-level investigatory teams, the Augmented Inspection Teams, the AIT, were organized and dispatched to other less serious accidents.

But since the beginning of 1986, over 20 AITs have been formed in response to problems at nuclear plants while no additional IITs have been called into being, not a single one. Three were needed in the first six months but none in the last 20 months.

Now maybe I am just too much of a cynic, but I don't believe there was a remarkable turnaround in the nuclear industry that suddenly eliminated the need for the highest level of investigation teams. Rather, I believe it is an example of why an independent safety board is needed.

The NRC has apparently adopted a very restrictive approach to forming the highest-level teams while public safety may demand more of an open approach, one that errs on the side of sending too many instead of too few to look.

The shift toward very restrictive use of the highest level investigative team highlights a fundamental problem of the NRC. In the aftermath of accidents, the agency investigates itself. Let me emphasize that. In the aftermath of accidents, the agency investigates itself. I am concerned that the disappearance of the ITTs from the NTC indicates that a continued aversion to forceful regulation.

The safety board I have proposed and have introduced addresses this internal conflict by making the investigatory arm completely independent of the agency. The safety board will decide what accidents merit a special investigation and the resources that should be devoted to that investigation.

I believe the public will have greater assurance that serious problems are being examined at the highest levels. At first glance, the AITs and the ITTs may appear to improve the NRC's accidents investigation capability. But, in fact, they are little improvements, if any at all.

First, the NRC's teams remain an internal response. The NRC staff decides which accidents require a special team and who will be on the team. The basic problem of the NTC staff investigating an accident in which it may have to share partial responsibility goes uncorrected under these circumstances.

Second, members of the NRC teams receive initial accident investigation training, but so far, no refresher program has been developed, and also, there is no emphasis placed on putting experienced investigators on the teams. The result is that investigations are too often on-the-job training for the team members.

The safety board would concentrate experience among a smaller number of investigators, allowing them to put the lessons of earlier investigations to work. A former head of the National Transportation Safety Board noted at an NRC hearing on this issue that "accident investigation is as much an art as it is a science."

The basics can be taught in a classroom, but the skills acquired in actual investigations are of equal importance. Current NRC policy does little to develop these skills.

Third, and perhaps most important, the teams developed by the NRC are temporary, one-time organizations. They have no life after the report on the investigation has been filed. Any follow-up is left to the normal workings of the NRC staff.

The safety board that I am proposing improves on this situation by creating an organization that has the ability to follow up on its recommendations; to provide a sometimes-needed push to action. For example, a 1985 accident in the Davis-Besse plant in Ohio was traced to problems with an auxiliary feedwater pump.

However, problems with the pump had been cited in the NRC staff report six years earlier. For six years, the NRC and the utility

had argued over required improvement. Delays of this duration seem to me to be incredible, and, I think, inexcusable, and a safety board will help prevent this kind of thing from occurring in the future.

Mr. Chairman, with your indulgence, I would like to clarify a few provisions of S. 14 that address concerns raised by some and seem to be constantly overlooked.

First, the safety board I am proposing will not duplicate existing structures. The AEOD is closed down under my bill and its responsibilities and resources shifted to form the heart of the safety board.

Second, there is no increase in the Federal budget from the creation of the safety board. The $5 million yearly authorization for the safety board is equivalent to the yearly budget of the AEOD.

Third, the safety board does not have the authority to impose regulatory changes on the industry. Let me emphasize that. The safety board that I am proposing does not have the authority to impose regulatory changes on the industry. The safety board has the authority to investigate accidents and make recommendations based on those investigations, but it is up to the NRC to make the final decision on possible regulatory improvements.

However, the NRC cannot ignore safety board's suggestions. The NRC must either accept them or explain the reasons for its rejection of them within 120 days.

In summary, the safety board recognizes a few fairly simple points, makes a few fairly stark observations. One is that the NRC can do a better job of accident investigation and follow-up;

Two, that earlier efforts to improve the safety at reactors and investigations of accidents have not worked;

Three, public confidence in the NRC is shaken;

And fourth, reform under the current structure will not work and will not regain public confidence, in my opinion. Too many times, Congress is slow to act to obvious problems that everyone knows are building toward disaster.

Purely coincidentally, my colleague from the State of Washington is sitting next to me, and his tenure in the Senate, which I am sincerely sorry he has decided to end after his term is up, and he has been on the floor of the Senate constantly warning us about the deficits and what impact it is going to have in the economy and the Senator sitting at the table, Senator Simpson and Senator Breaux have similarly done the same. The deficit impact was clearly building toward a disaster.

The deficit impact on Wall Street, I think, is a good example of that disaster. We all knew the deficit was a ticking time bomb. Some of us tried to do something about it, but as a body, and I include the President in that, we didn't make much progress. Collapse of the stock market now may be the catalyst to change that.

Well, does anyone here doubt that if we allow business as usual to continue at the NRC, notwithstanding the fine men and women who have part of that agency, notwithstanding the fact that the Commissioners are fine people, does anyone doubt that at some point, we will be back here not talking about reform in the NRC but about a catastrophic accident?

The NRC itself estimates that the chances of a core meltdown during the next 20 years may be as great as 45 percent. I acknowledge it said 10 to 45; that is the high range.

One former Commissioner believes that the risk may be much higher. By the way, the 10 to 40 percent does not take into consideration risk from factors such as earthquakes, major human error and the like.

We will never be able to make a nuclear plant risk-free, nor does this Senator expect that to occur, nor should that be the criteria that we must meet. But we should not accept even a 10 to 45 percent chance of a core meltdown if that is the best we can do.

It seems to me incredible that year after year, the general consensus is that the NRC is not working well and that this unfortunately fails to materialize into corrective action. As I said earlier, the need for reform seems to me is obvious, and the conditions to make those changes may never be better.

I am pleased that your Subcommittee is starting work on this, has been working on this issue with many months left on the calendar of the 100th Congress, which leads me to believe you are going to produce something that will be very positive work. I want to make it clear, my desire to work with the Subcommittee in any way they are willing to allow that to occur, pulling together the pieces that may make reform necessary.

Quite frankly, now that Senator Simpson is here, I believe that two reforms he has suggested are not at all inconsistent with, quite frankly, what my proposal is. I hope he will entertain the prospect of viewing it as a possible positive adjunct to the proposals that he is going to make.

As chairman of a full committee around here, I often marvel at my colleagues who come and testify on something important and then take off before questions can be asked. I would like to ask permission of the committee, since at 10 o'clock, I must chair the Judiciary Committee on nominations, and the Senator from Wyoming knows what happens if there is not someone there, I would like to ask permission to either submit answers to questions in writing, if you have any, or if it would not interrupt, to go down, start my hearing, and if there is an opportunity and the Senator from Washington is still testifying or you are asking him questions, come back and answer questions, if that is appropriate. I am not attempting to leave the Committee.

Senator BREAUX. I think it would be good, Senator, if we have any questions that we could submit them for the record. I know that your suggestion for an independent nuclear safety board is one that has been considered by the Subcommittee. It is one that could well find its way into the final product and we recommend, as you pointed out, Senator Simpson's bill calling for a single Administrator perhaps fits in that combination of that recommendation as one of the many recommendations that we are going to consider and want to continue working with you to help develop that package.

I do not have any questions. Do my colleagues have anything for Senator Biden?

Senator SYMMS. No.

Senator SIMPSON. I have no questions, Mr. Chairman, I would just like to say to Senator Biden that I will be up to the Judiciary Committee when the quorum arrives; please let me know.

I do hear what you are saying, and I want to say that I will visit with you privately, like we do, or get some questions on the record, or both, to determine just how much like the National Transportation Safety Board we want to make this, and does it go on to the day-to-day regulation or whether we might have an ad hoc group do this, because we have certainly more transportation accidents than we do nuclear transients.

Those are some of the things, and what the trigger might be, but I really appreciate your participation here, and I know that it is sincere because you have been working on it for some time. We will see if we can meld these together.

Senator BIDEN. I appreciate that, and I look forward to that. I just emphasize, because members of the NRC argue, although they should not, and I would urge you not to look at this as in any way an indictment of the NRC.

This is not viewed as a means by which to look to seek responsibility for another agency that the NRC could and should do. Institutionally, as we all know since we have been in government a long time, institutionally, it is very difficult to investigate yourself, and in a sense, when you go out and license a plant, as you must do, and then later, as technology changes and you learn that maybe it wasn't a wise decision, even though it was properly made at the time, if it presents a safety hazard later, we have learned that.

It is very difficult; it is human nature; it is awfully hard to go out and, in a sense, generate a report that says, "What I did before does not make sense now."

I just think that it is a human condition that we should recognize when we legislate. Thank you.

Senator BREAUX. Thank you, Senator.

Senator SIMPSON. Mr. Chairman, I have a statement that I would like to make if this would be an appropriate time.

Senator BREAUX. Please go ahead.

OPENING STATEMENT OF HON. ALAN K. SIMPSON, U.S. SENATOR FROM THE STATE OF WYOMING

Senator SIMPSON. Mr. Chairman, I want to thank you once again for the work that you have done in setting up the subcommittee hearing today. This morning the Subcommittee on Nuclear Regulation concludes its series of hearings on the organization and structure of the NRC, focusing on a subject that is, in my judgment, the single most important nuclear issue facing the Congress, the NRC, and the nuclear industry today—reform of the regualtory process for commercial nuclear power plants.

As we conclude this series of hearings, I am reminded of what was perhaps the most important and most pressing recommendation to come from the numerous post-TMI investigations—a recommendation forcefully stated in the following finding of the Rogovin report:

We have found in the Nuclear Regulatory Commission an organization that is not so much badly managed as it is not managed at all. In our opinion, the Commission is incapable, in its present configuration, of managing a comprehensive national safety program for existing nuclear powerplants adequate to ensure public health and safety. A radical reorganization of the Commission's structure and management is called for now.

That was 7 years ago. Yet despite the near-universal criticism of the collegial process as an ineffective means for regulating commercial nuclear power, and in the face of the unqualified endorsement of a single administrator by both the Kemeny and Rogovin reports, we have only marginally improved the ability of the Commission to regulate commercial nuclear power in this country in a safe, effective, and efficient manner.

Our 12 years of experience with "collegial regulation"—8 since the TMI accident—have provided ample evidence that the process simply does not work. Our efforts to redress the problem in 1980, when we "reorganized" the Commission, have had virtually no effect. And as I reread the Kemeny and Rogovin findings, the underlying problems that they identified 8 years ago continue to plague us today.

The advantages of "collegial regulation" have failed to materialize—we have a collegial body that does not "college"; the objective that we all share—safe nuclear power—has been hampered as a result of a system that breeds inefficient, indecisive regulation; and, worst of all, we have a system that diffuses, rather than concentrates, responsibility and accountability.

It is no small wonder that we have failed to win the battle to restore credibility to nuclear regulation, or that we now have pending before this subcommittee two bills that would take away from or duplicate in another agency responsibilities that now rest with the Commission. These problems—and the symptoms that these bills address—stem from a collegial approach to regulation that is fundamentally unworkable.

This is not an indictment of any individual member—past or present—of the Commission. I have come to know all of you personally and I have the greatest respect for the task that you face and the job that you have done. I reject the notion that you have become complacent about nuclear regulation or that you are "cozy" with the industry. Nor is it an indictment of the nuclear power industry, where significant strides have been made in response to the post-TMI recommendations to improve the way in which nuclear plants are constructed and operated.

But you are all contrained by an unworkable and inefficient legislative framework, established 40 years ago by Congress and imposed on the Commission in 1975, when it was set up as the Federal agency exclusively responsible for regulating commercial nuclear power. Unfortunately, under this system no one Commissioner is ultimately responsible for ensuring that the job gets done and accountable if it does not.

The time has come to change the system. I welcome all of you and look forward to a productive 2 days of hearings. In particular, I welcome the good counsel of my distinguished colleagues, including Senator Biden, and look forward to working with both of you as we

seek to address the problems confronting nuclear regulation in this country.

Senator SYMMS. Mr. Chairman, I thank our colleague. If I could just make a comment here; I am reminded of a story which takes place in 1927—and I tell this because of what the Senator said with respect to the five commissioners that are here—a Mr. Ketterling, who was a great business leader at GE at the time, was working feverishly in his office and his secretary raced into the office and with exclamation said, "He did it, he did it," and he looks up and says, "He did what?" and she says, "Lindberg flew solo across the Atlantic." He went back to his work and said, "Tell me when he can do it with a committee."

Senator BREAUX. Senator, we thank you very much for your testimony. You are excused.

We are pleased to receive testimony now from our colleague from the State of Washington, Senator Dan Evans.

STATEMENT HON. DANIEL J. EVANS, U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator EVANS. Thank you, Mr. Chairman. I have a short statement, but I would ask that it be placed in the record in its entirety.

I would rather comment somewhat separately from the statement itself. First, let me say that I have an unusual opportunity to understand the skill and the devotion to duty of the chairman of the NRC. He, like I, had the privilege of graduating from Roosevelt High School in Seattle, Washington more years ago than either of us would like to admit. And he has been a good friend and a distinguished public servant in the Navy and now with the NRC ever since.

Mr. Chairman, I would like to reflect back for a moment on my experiences as Governor with a form of State government in our State that seemed, over the years, to blossom in terms of the number of commissions that we had.

They were management commissions, which I think can be distinguished from safety boards or other groups that would present recommendations but did not have the responsibility of carrying out those recommendations. But in each case, these were management commissions. We had a Highway Commission; we had a Game Commission; we had a Parks Commission and Lord knows how many others.

I came very quickly to the understanding that there was only one commission of an appropriate size, and that was one. I never saw a commission that managed a department that could do it as well as a single manager. I am enthusiastically in support of the concepts of S. 1770, which my distinguished friend from Wyoming has introduced. If it is his wish, I would like to be included as a cosponsor of that piece of legislation.

Senator SIMPSON. Deeply pleased, yes.

Senator EVANS. Mr. Chairman, I have followed very closely the activities of the Nuclear Regulatory Commission and, in fact, the Atomic Energy Commission which preceded it from varying points of view, as Governor, as Chairman of the Pacific Northwest Power Commission and now as a United States Senator.

We have, through a combination of organizational structure, coupled with the legal ramifications of commission members meeting and talking with one another, created an absolutely impossible management scheme, where commissioners cannot even talk to one another without fear of falling prey to legal problems, which means that you simply have a headless agency or at least a multi-headed agency with no head really easily talking to another.

We are at a different point in nuclear regulation today than I think we were. The structure created by the NRC thirteen years ago when it was separated by the AEC by Congress simply hasn't worked in practice, simply for the organizational reasons that I have mentioned. Safety oversight and enforcement functions need greater consistency and discipline today at the top levels of management.

The Commission no longer faces the heavy backlog of licensing and permitting applications for the design and siting of commercial nuclear power plants. That era ended in 1979 with the accident of Three Mile Island and the surplus of electricity over projected demand, at least for the foreseeable future.

An era of regulating and monitoring the safety of reactors that are currently operating has begun. I believe that an agency headed by a single administrator is better adapted to that role than the current structure of the NRC.

A single director and public accountability are not mutually exclusive. In fact, I think it is, rather, the other way around. A single administrator and public accountability are much more likely to be joined rather than separated.

We all know that public acceptance of the role of nuclear power in our society is critical to its future. Current public skepticism has virtually halted any advance in nuclear power, but nothing in this bill, the bill of the distinguished Senator of Wyoming, affects the right of the public to intervene, nor to voice its opinion in the affairs of the agency.

The Advisory Commission on Reactor Safeguards, which has provided expert technical advice to the AEC and the NRC since 1946, will continue to function as will other advisory groups.

What will change is the ability of the agency to function effectively once all interested parties have been heard on the record and decisions have been made. I do not propose, in my remarks, to comment specifically on the potential make-up of a separate safety board or an Inspector General or the other elements that may be necessary in a comprehensive bill, but I do believe that however safety decisions are made, the implementation, the carrying out, the management of this very important agency can better be done, in fact, I think only can be done if we give the responsibility to a single director and couple that with continued intensive and continuous, I might add, oversight by this Committee and by the Congress.

Thank you, Mr. Chairman.

Senator BREAUX. Thank you very much, Senator, for your presentation. I really think there is, building in the Congress, a support for some of the ideas that both you and Senator Biden articulated this morning to the Committee. Our role is to try, after we have completed these hearings, to sit down and, within the Committee,

to write legislation which recommends and incorporates the best that we can.

Certainly your concept, which Senator Simpson shares, is high on the list of things that needs to be accomplished, and thank you very much for being a leading spokesman in these areas of safety.

Senator Simpson.

Senator SIMPSON. Thank you, Mr. Chairman.

Dan, we are going to miss you greatly. I am going to miss you greatly, not just as a participant in a knowledgeable way in nuclear issues and nuclear waste. I have always appreciated your counsel, and you have been superb, but I will miss you also very much as a friend. I wish you well.

Let me just ask one question. It seemed to me, I recall, that President Carter actually asked you to join the Commission, did he not, at one time? Was that an offer?

Senator EVANS. I was asked by the White House to serve as Chairman of the Nuclear Regulatory Commission; that is correct.

Senator SIMPSON. Why did you decline?

Senator EVANS. I examined the makeup of the Commission and the potential of its operation and decided that it was too difficult to make a difference and to really be able to carry out responsibilities I thought were there. So it was the structure that probably was the ultimate decisionmaker or the ultimate factor in my decision.

Senator SIMPSON. And in your 30 years, now, in politics, 20, then, as an administrator, a chief executive, you just found it was an organization that was too ponderous to deal with; is that perhaps true?

Senator EVANS. That is absolutely true. At that time, however, I had not joined the Senate, and again, I will let that just drop and say that the Senate is a gazelle compared to the ponderous nature, I think, in terms of the makeup and how the Commission is operated.

I would say, Mr. Chairman, that there is one other observation. What you do here, I think, will be of great importance to us. I just came from a meeting that had to do with the report of the National Academy of Sciences on the defense production reactors and their safety requirements and the way in which the Department of Energy is organized to handle those safety requirements.

I think what you do here may be of great help in bringing us closer to parallel tracks between the defense and commercial side of safety in nuclear affairs. I see no reason why they should be so diverse and so separated in how we do what is essentially the same job, that is, ensuring the utmost safety in the operation of those reactors, whether they are for defense or civilian purposes.

Senator SIMPSON. Thank you very much.

Senator BREAUX. Senator Symms.

Senator SYMMS. Thank you very much, Mr. Chairman, and thank you very much, Senator Evans for a statement that I share and I agree with. I don't have any questions that I would like to ask you right now.

But if there are other questions, I don't want to interfere, but I would like to make a brief opening statement myself.

Senator BREAUX. Why don't we excuse the Senator? I think the point that you made is very clear. You made two points, really: A

Commission of five is very difficult, and a Commission of ten is impossible. We thank you very much for being here. Thank you.

Senator SYMMS. Thank you very much. Good wishes to you.

[Senator Evans' written statement follows:]

STATEMENT OF HON. DANIEL J. EVANS, U.S. SENATOR FROM THE STATE OF WASHINGTON

Mr. Chairman, I appreciate the chance to testify before your Committee today. I commend you for your continuing leadership in the field of nuclear power and its safe, efficient operation. Please add me as a cosponsor to S. 1770.

I have shared your concerns about the need to restructure the NRC for some time. The current structure of top management, consisting of five individual Commissioners with often separate opinions, clearly makes the development of consensus on important decisions more difficult. On important licensing and rulemaking decisions, the Congress and general public usually hear a cacophony of voices, rather than one. The Commission's crucial role to act as a consistent, single entity responsible to the public for the safe operation of commercially-licensed reactors has been lost. The desire for public accountablity and conflicting opinions appears to have become a goal in itself, without regard for the eventual outcome of decisions.

Let's face reality. The structure envisioned by the creator of the NRC thirteen years ago, when it was separated from the AEC by the Congress, hasn't worked in practice. The safety oversight and enforcement functions need greater consistency and discipline today at the level of top management. The Commission no longer faces a heavy backlog of licensing and permitting applications for the design and siting of commercial nuclear powerplants. That era ended in 1979 with the accident at Three Mile Island and the surplus of electricity over projected demand, at least for the foreseeable future.

An era of regulating and monitoring the safety of the reactors that are currently operating has begun. I believe an agency headed by a single administrator is better adapted to that role than the current structure of the NRC.

A single director and public accountability are not mutually exclusive. We all know that public acceptance of the role of nuclear power in our society is critical to its future. Nothing in this bill affects the right of the public to intervene or voice its opinion in the affairs of the agency. The Advisory Commission on Reactor Safeguards (ACRS), which has provided expert technical advice to the AEC and NRC since 1946, will continue to function, as will other advisory groups. What will change is the ability of the agency to function effectively once all interested parties have been heard on the record and the Agency has made a decision.

The structure of Director and Deputy Director, appointed by the President and subject to the advice and consent of the Senate, is simple and straightforward. This Committee will have the opportunity to review carefully the qualifications, ability, and temperament of these two individuals. The Committee will continue to exercise its necessary powers of oversight of the new agency. The Director, appropriately, is given the authority to select three Associate Directors to assist him in managing the agency. The agency will thus be able to act as one integral entity and speak more clearly with one voice. This should enhance its image and credibility on licensing and safety issues with the general public.

For those reasons, I commend the senior Senator from Wyoming for sponsoring this bill and I urge the Committee to report it favorably to the full Senate.

Senator BREAUX. Senator Symms.

OPENING STATEMENT OF HON. SYMMS, U.S. SENATOR FROM THE STATE OF IDAHO

Senator SYMMS. Mr. Chairman, I want to commend both you and Senator Simpson for holding these hearings and for the effort that you have both put in on this important matter. I think it helps both the Congress and the NRC to air these issues so we can work together to resolve the problems. I have said for many long years that if we will recognize what the problem is, sometimes the solution is not too hard to find.

I think we have to recognize that these hearings have demonstrated that one of the major problems with the agency is its cur-

rent structure. There is a good chance, with all the attention and talk focused on the Commission itself, that the agency's major purpose, public health and safety, may have had to take a back seat. I am not saying that I am convinced of that, but there is a possibility.

For this reason, I wish to express my support for Senator Simpson's bill, S. 1770, which would replace the five-member Commission with a single administrator. I am convinced that that is the only way things are ever going to be able to get done by the NRC.

It is quite clear to me that nuclear energy is vitally important to this country. Every day, we watch these events in the Persian Gulf. If that isn't a signal to us that we need to get moving with an alternative source of energy and more energy independence, I don't know what it takes to wake us up as Americans.

But for several years, the debate about nuclear issues has centered much too often on the five commissioners instead of on the regulation and the problems. The public debate is most important on a matter so critical to all of us as the safety of those operating plants. But because of the way the Commission is structured, in addition to the several independent bodies that are tied to the NRC, too many voices have to be heard from and incorporated into a decision before the Commission is able to act.

The debate gets into some kind of a babble sometimes, and we can't get a clear decision. I don't blame the commissioners for that. I think it is just the institutional structure that they have to work from.

I don't think that is the way it should be; I don't believe that is the way it was intended to be; and I personally don't believe that it leads to greater safety, if that is what the purpose of the Commission is all about.

Senator Simpson's bill follows the recommendations of two high-level commissions formed after the accident at the Three Mile Island nuclear plant. Those two reports both question the workability and effectiveness of the commission structure. They recommended that the Congress abolish the Commission and in its place establish a regulatory agency headed by a single executive. This makes sense to me.

The NRC is one of the only two remaining Federal commissions charged with the responsibility for public health and safety that has not been restructured under a single administrator.

The commissioners themselves have all been fine people, but they have been trapped in an unworkable situation. The single administrator concept puts responsibility in one place and increases the accountability of the agency. A single administrator would not mean that we would do away with the debate; there would be significance to the debate. I think it is important that we emphasize that, but we need to get the spotlight off the personalities and on to the purpose and the product of the agency, and in my view, Senator Simpson's bill offers a blueprint for us to follow in our workings to try to resolve some of these problems.

So I add my support to that effort, and thank you, again, Mr. Chairman, for the extent and the depth that you have been going into these issues, because I personally believe that it is important

for the future of the country that we have a strong nuclear industry to help give us balance to our whole energy equation.

I believe that we need to move forward with it and not be arguing about what is going to be done. As Mr. Ketterling said, "When you can come back and do it with a committee, let me know."

I agree with what Senator Evans has said here: It is very frustrating and very difficult. We get so many cooks trying to make the stew, and I think this is an opportunity for us to do something that could be helpful and really give the industry a shot in the arm and move it forward. I think it is badly needed in this country.

So I thank you very much.

Senator BREAUX. I thank the Senator for his statement. At this time, I would like to welcome the commissioners, Admiral Zech and all of the Commission members.

Admiral, we have your statement why don't you begin.

STATEMENT OF HON. LANDO W. ZECH, JR., CHAIRMAN, NUCLEAR REGULATORY COMMISSION, WASHINGTON, DC, ACCOMPANIED BY HON. THOMAS M. ROBERTS, COMMISSIONER; HON. KENNETH M. CARR, COMMISSIONER; HON. FRED BERNTHAL, COMMISSIONER; AND HON. KENNETH C. ROGERS, COMMISSIONER

Admiral ZECH. Thank you, sir. With your permission, Mr. Chairman, I would like to submit my formal statement for the record and proceed with some oral remarks.

Senator BREAUX. Without objection.

Admiral ZECH. Mr. Chairman, members of the Subcommittee, my fellow Commissioners and I are pleased to appear before you today to discuss several bills which individually or collectively would restructure the Nuclear Regulatory Commission through the creation of a regulatory agency headed by a single administrator and the establishment of a nuclear safety board and Inspector General.

These bills are, first, S. 1770, the Nuclear Regulation Reorganization Act of 1987; second, H.R. 3285, the Nuclear Energy Reorganization Act of 1987; third, S. 14, the Independent Nuclear Safety Board Act of 1987; fourth, S. 1769, which would establish an Inspector General; fifth, S. 100, the Improved Nuclear Standards Act; and sixth, S. 908, the Inspector General Act Amendments of 1987.

Before addressing these specific bills, I will set forth the Commission's position on restructuring the NRC.

With respect to whether the NRC should be restructured as an independent agency headed by a single administrator, a majority of the Commission supports the single administrator concept.

I personally strongly support a single administrator organization. In recent years, there have been three independent examinations of the structure of the Commission. Following the Three Mile Island accident, both the Kemeny Commission and the Rogovin Special Inquiry Group recommended in 1979 that the NRC be headed by a single administrator.

In a strongly worded statement, the Kemeny Commission declared that, and I quote,

> As presently constituted, the NRC does not possess the organization and management capabilities necessary for the effective pursuit of safety goals.

The Rogovin Inquiry Group concluded that, and I quote,

The central and overwhelming need is for legislative and executive reorganization to establish a single chief executive with the clear authority to supervise and direct the entire NRC staff.

In response to these recommendations, the President prepared and the Congress did not object to Reorganization Plan Number 1 of 1980. That plan vests additional executive authority in the chairman. Subsequently, the Grace Commission recommended that Congress enact legislation which would further strengthen the authority of the Chairman as the chief executive officer of the agency. However, no legislation was passed to implement the Grace Commission recommendations.

In large part, the central focus of the discussions on the structure of the NRC is whether the public is better served by an organization where important decisions are made through a collegial process or by an agency headed by a single decisionmaker.

In addressing this issue, the Rogovin Inquiry Group stated, and I quote,

There is not an agency in government that would not better provide for a diversity of views if it were headed by a Commission. It is not likely, however, that any of these agencies would be as well managed.

In 1954, when Congress enacted the Atomic Energy Act, one of the primary mandates of the Atomic Energy Commission was to regulate the development of the commercial uses of nuclear power which were then in their infancy. A collegial body was a sound structure to formulate licensing procedures and resolve the many different licensing and policy issues arising from the development of this highly complex new technology.

In the ensuing 33 years, much has changed. More than 100 commercial nuclear power plants have been licensed to operate. As a result, the workload of the NRC has shifted from evaluation of construction permit and operating license applications to the regulation of a maturing operational industry.

In carrying out this role, it is the Commission's view that efficient management of this major regulatory task is increasingly important to maximize the effectiveness of NRC's resources.

A commission-type organization does lead to a diversity of technieal and professional opinion. For those who might think that a single administrator would lack the diversity of opinion brought by the commission form, they need only recognize that our professional staff is capable of providing a broad diversity of technical and professional judgment which might be pertinent to safety decisions.

Additionally, our rulemaking and adjudicatory proceedings assure that a single administrator would be amply exposed to a wide range of views on all significant issues.

A majority of the Commission believes that a single administrator should result in increased responsibility and accountability at the top of the agency, which it believes important to meet this agency's statutory mandate for protection of public health and safety.

Turning now to nuclear safety board proposals, the Commission does not object to the establishment of a group which would assess the safety of NRC-licensed facilities and conduct investigations of significant safety events at those facilities if legislation is enacted creating a single administrator.

However, a majority of the Commission strongly advocates that such a board, which would perform many of the functions now performed by the Commission's Office for Analysis and Evaluation of Operational Data, should become part of the single administrator nuclear regulatory agency, rather than a separate Federal agency.

If a nuclear safety board is chartered as a separate Federal agency, this would result in an unnecessary duplication of functions. For example, the NRC would still require sufficient staff support to determine what happened and what actions should be taken after an accident.

NRC could not be expected to rely completely on another Federal agency in order to make its public health and safety determinations.

An independent safety board has the potential to complicate rather than simplify nuclear regulation by further diffusing accountability and responsibility for the execution of the the agency's mission.

Some argue that a nuclear safety board needs to be a separate Federal agency in order to increase confidence in nuclear incident investigations by relieving the nuclear regulatory agency of the responsibility to investigate and determine the cause of events to which the regulatory agency's activities might have been contributing factors.

However, a majority of the Commission believes that the nuclear safety board could be given sufficient independence within the regulatory agency to mitigate these concerns.

In sum, the benefits of having the nuclear safety board as part of the regulatory agency outweigh the benefits to be gained by giving it total independence.

The Commission does not quarrel over the basic concept of an Inspector General. The need for an independent and objective internal investigative and audit unit within the NRC was recognized at NRC's inception in 1975. Hence, the Commission established the Office of Inspector and Auditor to perform that function. The Commission believes that this office, the Office of Inspector and Auditor, as currently structured, affords the best mechanism for accomplishing these tasks.

The Commission would not object to the creation of such a statutory Inspector General office in an agency headed by a single administrator. The Inspector General's functions should be limited to those currently performed by the NRC's Office of Inspector and Auditor.

For reasons specified in the Commission's October 8, 1987 testimony before this Subcommittee, the Commission unanimously believes that the regulatory support functions now performed by our Office of Investigations should not become part of an Inspector General's office.

Mr. Chairman, your letter, of invitation asked for our views on six specific legislative proposals which are pending before Congress. Our views on these proposals are included in our prepared testimony, which has been provided to the Subcommittee.

Mr. Chairman, that concludes our testimony. I understand my fellow Commissioners may have separate statements. Thank you very much.

Senator BREAUX. Thank you, Mr. Chairman. We do have a vote. It is a 30-minute vote. I think we have the time to get the testimony of the Commission on the record first. Who else has a statement? Mr. Carr, you have a statement.

Bring that mike down to you, please.

STATEMENT OF HON. KENNETH M. CARR, COMMISSIONER, NUCLEAR REGULATORY COMMISSION

Mr. CARR. Mr. Chairman, members of the Subcommittee, when I was appointed a Commissioner a little over a year ago, I was aware that both the Kemeny Report and the Rogovin Report, as well as all previous chairmen, were convinced that a single administrator would be preferable to a commission approach to agency management.

Additionally, my years of management experience in the U.S. Navy told me that authority and responsibility should be vested in a single agency head. However, after a little more than one year in the job, I am not convinced that this proposed change in structure would lead to any major improvements.

As the primary focus of the Commission changes from the licensing of new plants to the challenges posed by emerging safety issues from aging plants, policy decisions may still benefit from the experience and talents of a diverse commission.

Also, the safety decisions made on the evolving generation of advanced light water reactors and advanced reactor designs will be critical to preserving energy security for the nation through viable energy alternatives and might benefit from this diversity of views.

In my opinion, the change to a single administrator may result in only small enhancements in administrative efficiency, which might just as easily be achieved by expanding the chairman's authority to manage the routine, day-to-day administration of the agency. In our other adjudicatory and rulemaking roles, the advantage of the diversity of background afforded by the five-man commission approach may outweigh the disadvantages.

In summary, Mr. Chairman, while I do not support the single administrator concept, neither do I oppose it. I am convinced that changing an agency with five Presidential appointees confirmed by the Senate to an agency with a single administrator and, as proposed in one bill, H.R. 3285, up to eleven additional Presidential appointees confirmed by the Senate who are scattered among various levels and components of the agency, is not the way to go.

However, if it is decided to restructure the agency, it must be done carefully and thoughtfully so as not to exacerbate the problems rather than solve them.

Senator BREAUX. Thank you, Mr. Carr.

Dr. Rogers, do you have a statement?

STATEMENT OF HON. KENNETH C. ROGERS, COMMISSIONER, NUCLEAR REGULATORY COMMISSION

Dr. ROGERS. Yes. Thank you very much. Mr. Chairman and members of the Subcommittee, as a new member of the Commission, I have not yet had an opportunity to view at first hand all of the kinds of situations responsible for the sense of frustration and inac-

tion which has generated enthusiasm to turn to a single administrator form of governance of the NRC.

I have seen some examples of situations which can, indeed, give rise to such feelings. However, I have noted that these have generally arisen not from delays and a lack of decisionmaking consensus at the Commissioners' level, but rather from the myriad convoluted procedures that the staff must follow before they are permitted to bring a matter before the Commissioners for a decision.

These procedures have arisen from the overlayering of one procedure on another over the years so as to assure that every conceivable question has been asked and that all requirements have been followed.

They are an amalgamation of the actions of Congress and the internal procedures the agency has adopted to be responsive to intense scrutiny of Congress, the public and the courts.

The consequences are sometimes startling when seen for the first time. For example, rulemaking on generic safety issues has historically been, on the average, a four-year process within the Commission, followed by another four-year process before corrective action is fully implemented by industry. Of course, in some cases, much faster action within NRC and in industry has, in fact, occurred, but the basic steps that must be taken to complete a cycle from early identification of a possible generic problem to full resolution and the proposal of a rule for Commission action still averages four years.

Since most of this time is consumed by staff activity rather than Commission activity, such actions could and would likely continue to take that long with a single administrator replacing the five Commissioners. It is the processes below the Commissioners' level that must be examined and changed if more efficient and rapid action is to be possible.

A major pitfall I see is the possibility that a great deal of time, effort and resources could be expended to change the form of Commission governance, while a large, fundamental problem remains that was one of the principal reasons for considering a change in the first place. Thus, the change might not correct the shortcomings at all.

One of the problems of the Commission form of governance is that new commissioners have not always come to the Commission with an exposure to and an understanding of the problems and techniques of organizational management. At times, this apparently has led to a confusion among commissioners between policy setting and policy implementation and has contributed to a diffusion of management operational authority and responsibility at the top of the agency. The results have been the substitution of debate for action and problem identification for problem solving.

In my opinion, governance of the NRC by a commission can work and work well provided the Commissioners are chosen from among men and women who have demonstrated their capabilities as managers, as well as having clearly established their technical knowledge.

They must understand the boundaries which must be observed between policy and operations for a policy and adudicatory board

to function and relate effectively to an operational chain of command which implements those policies.

The agency must have a single individual who is responsible for its operational management. A policy and adjudicatory board cannot provide the day-by-day supervision that is necessary, nor can it make the daily operational decisions that must be made for the organization to run smoothly and efficiently. While I favor a Commission form of governance, I believe that the Chairman of the Commission should be the chief executive officer who translates policy into operational decisions and to whom a chief operational officer reports who is responsible for overseeing all of the day-to-day operations which effectuate those policies. I believe this can be done within the current statutory authority.

In my view of the Commission, the Chief Executive Officer is obligated to consult with his or her fellow commissioners as individuals so as to always have the benefits of their experience but makes the ultimate decisions with respect to precisely how and when policy is to be implemented by operations.

The shortcomings of a commission because it is inappropriately constituted or because it is severely limited by the government in the Sunshine Act have been well exposed. But the benefits to the public of a final look at policy and adjudicatory matters by a Commission composed of a small group of experienced and expert individuals with varied backgrounds and perspectives should not be minimized.

There is so much at stake for our nation in nuclear regulation policy that a final overview by a high-level group of peers and the assurance it helps provide of achieving a balanced approach to nuclear regulation, should not be rejected without very careful consideration.

On matters of nuclear regulatory policy, a total system overview that involves pausing to take a step back to view all facets of a policy proposal from a wholistic point of view, is essential. I do not believe that diversity of professional staff opinion and expertise can entirely meet that requirement.

The key phrase here is "group of peers". Staff reporting to a strong manager oftentimes give the boss what they think he or she wants, and the possibility of a full airing of competing viewpoints evaporates.

I have not yet seen anything at the NRC that convinces me that a carefully assembled group of Commissioners with a strong Chairman and with Commissioners staying out of routine management decisions can't work. Nor have I yet seen clear evidence that the full exercise of the authority given to the Chairman of the Commission under Reorganization Plan No. 1 of 1980, which defines the chairman as the principal executive officer of the Commission, does not give the Chairman the necessary authority to effectively and efficiently supervise the management of the operations of the Commission.

I think the Commission today has all the essential ingredients to work effectively as a regulatory body. I believe that we, given the clear message from Congress that we need to improve our effectiveness, can work to streamline our staff activity and can restructure

our procedures to give the chairman more operational management control.

Beyond that, I suggest that Congress look carefully at some of the existing legislated procedures that bind the NRC if changes are seriously contemplated.

I join my other fellow commissioners in not objecting to the creation of a nuclear safety board, but I see no need for it if the present Commission structure is maintained. Under a single administrator form of governance, such a board may be absolutely necessary, but then I believe it should not be a separate Federal agency.

If such a board is created, it should work directly with and not complete with nor complicate nuclear regulation. The present activities carried out by the Commission's Office for Analysis and Evaluation of Operational Data and the Advisory Committee on Reactor Safeguards are both very important for carrying out nuclear regulation and should not be transferred elsewhere.

If they were, the regulatory agency would ultimately have to recreate those activities within itself, as they are vital to its operations.

I have no objection to an Inspector General, but, again, wish to emphasize that the activities that the Office of Investigations performs are a necessary function for Commission decision-making. The checking of the validity of information upon which important regulatory decisions are are to be made must continue to be one of the tools immediately available to regulators.

Those activities should, therefore, not become part of an Inspector General office which, by its very nature, must be disconnected from the management of the regulating agency, as is the Office of Inspection and Auditor.

On our side, if we strive to assure that the independence of the Office of Inspection and Auditor is maintained, I think the concerns that have led to the proposal for a NRC Inspector General will be satisfactorily addressed.

That completes my testimony.

Senator REID [presiding]. Do any of the other Commissioners have statements? Mr. Bernthal.

STATEMENT OF HON. FRED BERNTHAL, COMMISSIONER, NUCLEAR REGULATORY COMMISSION

Mr. BERNTHAL. Yes, Mr. Chairman. I had not originally planned to submit a statement, but the common denominator necessary for the chairman's statement departed significantly from my own views.

Some might argue the diversity of opinion you see before you today would, in itself, provide the strongest argument in favor of a single administrator. I suspect others would use the same argument for the contrary view.

In a similar hearing chaired by Senator Simpson on June 17, 1986, I provided a rather detailed statement on this subject, and I am not going to repeat all of those comments. But my views have not changed, and I refer the Committee to those views.

Senator REID. What was that date?

Mr. BERNTHAL. It was last year, June 17, 1986. But I did want to summarize briefly, and I have, again, provided a record statement, because some additional points have become apparent, even in the last year, that I would like to stress.

I don't think that there are flaws inherent in the commission form of governance, as originally conceived, for regulating a subject as controversial as nuclear power. The need for continuity and stability in the nuclear regulatory process seems to beg for a Commission.

But the perverse system that we have now goes far beyond stability; it is tying us in knots. It leads not to consensus and to better decisions, but to fragmented and, ultimately, flawed decisionmaking. The point of collegiality was to arrive at a balanced and reasoned decision in the hope that five heads of diverse experience and knowledge would be better than one.

But the Sunshine Act has so undermined the concept of collegial governance that I don't have a doubt for a moment that this misbegotten statute will eventually preside over the general demise of the commission form of governance. And the public interest will be the loser for that.

If collegial decisionmaking is desirable in principle but impossible in practice because of misguided but well-intentioned law, there should be a better solution than to dispose of collegial decisionmaking. Ironically, it is not the more politically responsive single administrator Executive Branch agencies that have been penalized in effectualness and efficiencies; it is we commissions, we, with the checks and balances inherent in diverse and publicly-expressed views, as we are seeing today.

I wait with interest to see how much sun will shine on the private deliberations of a single administrator head of the Nuclear Regulatory Commission.

But realism dictates that we now seek practical solutions, and indeed, our cumbersome administrative procedures are far from the only or even the best arguments for change at the NRC.

I have long believed that Congress' decision to abolish its own Joint Committee on Atomic Energy, which used to oversee all aspects of the development and use of this still new technology, was a fateful mistake.

Of greater concern, however, is whether such fragmented Congressional oversight provides the thoughtful and coherent direction so necessary for matters that are so important to our national well being and security.

As you know, Mr. Chairman, that problem extends beyond that being considered here today and was referenced earlier this morning—beyond the narrow confines of the NRC. In my judgment, new checks and balances and new accountability have to be proposed to remedy this situation, particularly at the NRC.

Careful thought has to be given to the remedy, however. For just as a competent, obective, dedicated, single administrator could more effectively and productively manage the nuclear regulation of the 1990s, a less capable, less well-motivated individual could, in short order, do irreparable damage to the still-fragile viability of the nuclear option in our country.

A single administrator of the NRC should, therefore, serve at the pleasure of the President within the Executive Branch as does the Administrator of the Environmental Protection Agency, and I will strongly oppose any single administrator proposal that does nothing more than dispose of the distraction of the four additional opinions now present on the Commission. That will mean the worst of both worlds, Mr. Chairman: No accountability, and no presidential counterbalance to the influence of the Congress that now dominates day-to-day workings of the NRC.

We now have 25 nuclear powerplants in the first two years of operation in our country. Less than 10 plants remain to be licensed, and those are scattered at lengthening intervals into the mid 1990s. More than I could have ever anticipated even a year ago, it is manifestly apparent that this is already changing the very face of the NRC.

We are increasingly an agency preoccupied not with fundamental policy or even engineering and construction, but with the safe operation of nuclear powerplants and the safe use and disposal of radioactive materials, and that is the mode that is likely to continue, in my judgment, through the remainder of this century.

More and more, the Commission concerns itself with standards, regulatory compliance and enforcement and management. Those responsibilities are clearly better suited to a single agency head responsible to the President than to a collegial governing body.

Indeed, the similarities of such responsibility to those of another existing Federal agency should not be overlooked. Relieved of its special responsibilities to oversee an historically great multitude of engineering and construction projects, the NRC clearly now shares a common objective with the EPA: the protection of the public health, safety and the environment.

Indeed, I still believe Congress may eventually come to consider the advantages of combining the NRC and the Environmental Protection Agency under a single agency head. There is nothing novel about this suggestion. Several European countries have entirely similar arrangements. In fact, it was suggested at least at rather high staff levels back in the mid-1970s here in the Senate.

The very establishment of an independent NRC was, in some respects, an accident of history. Had EPA not been constituted before the break-up of the Atomic Energy Commission, matters might well have turned out differently.

In any case, instead of the NRC and the EPA finding themselves beset by a host of overlapping jurisdictional entanglements, as we continue to do, the combined expertise and institutional experience of these two agencies should be complementary and, indeed, synergetic.

Then the risks associated with acid rain, chemical wastes, chlorofluorocarbons, the greenhouse effect and the panoply of environmental insults generated by the activities of man may, along with the risks of nuclear power generation, be treated on a common footing.

This concludes my comments, Mr. Chairman.

Senator BREAUX. Thank you very much, Mr. Bernthal.

Do any other Commission members have statements?

[No response.]

Senator BREAUX. If not, we will go ahead and proceed to questions. I would ask unanimous consent that a statement from Senator Alphonse D'Amato from New York be made part of the record.

[Senator D'Amato's statement follows:]

STATEMENT OF HON. ALFONSE M. D'AMATO, U.S. SENATOR FROM THE STATE OF NEW YORK

Mr. Chairman, I would like to offer testimony this morning in support of legislation I have introduced to provide added assistance to the Nuclear Regulatory Commission to ensure that nuclear powerplants use the safest possible design, construction methods, operating techniques, and workable evacuation plans.

Mr. Chairman, I testified over a year ago on this matter before this very committee. At about the same time, I requested that the GAO conduct a study of the NRC's actions, procedures, and enforcement efforts in ensuring the safe operation of nuclear powerplants. The conclusions reached by the GAO, Mr. Chairman, are quite alarming.

The NRC has been asleep at the switch—literally. The GAO report has revealed faulty NRC procedures that have allowed certain nuclear plants to continue operating in the face of design problems, questionable equipment, and even utility personnel found asleep in the control room. Among its conclusions:

The NRC lacks basic guidelines to identify safety violations severe enough to require a nuclear plant to shutdown;

As of last December, the NRC had a backlog of 163 unresolved generic safety issues, including 32 considered to pose a significant risk to public health and safety;

Such unresolved generic safety issues include:

(1) The effects of radiation on the support mechanisms of the reactor itself;

(2) Reactor coolant pump seal failures;

(3) The failure of protective devices on essential equipment within the plant.

Mr. Chairman, these are not technical issues. Safe uses of nuclear power are essential to the safety and well-being of the citizens who reside in the vicinity of nuclear powerplants. The consequences of continued unsafe operating procedures at nuclear powerplants is unimaginable.

In light of these findings, we must obviously take a closer look at the NRC and its operating practices. My legislation, the improved Nuclear Standards Act, does just that.

First, it creates the position of inspector general at the Nuclear Regulatory Commission, to be appointed by the President and confirmed by the Senate. The President will be required to appoint a candidate with expertise in nuclear safety issues. This position combines functions currently performed by the office of inspector and auditor, and the office of investigations at the NRC. The major responsibilities of the inspector general would be as follows: (1) To review all nuclear safety procedures implemented by the NRC; (2) propose public safety regulations to the NRC; and (3) submit an annual report to the Congress regarding the adequacy of nuclear safety procedures used in the United States.

Both my and Senator Simpson's bills create the office of inspector general. Mine grants the office more responsibility and independence to pursue investigations, propose improvements, and report directly to the Congress. It is important that this new official be granted the authority to investigate allegations of wrongdoing on the part of licensees. It is widely contended that top NRC officials have made it difficult for the investigations staff to accomplish its mission. An independent inspector general would go a long way to restoring public confidence in the NRC, and helping the NRC get its own house in order.

There are four other major components of my legislation:

(1) It expands the current role of the inspector general at the Federal Emergency Management Agency to allow that person to review standards and procedures for emergency evacuation plans for nuclear power facilities. The inspector general and the director of FEMA are directed to report directly to Congress regarding the adequacy of NRC standards, procedures and enforcement.

(2) FEMA is directed to conduct an annual test of the evacuation plan for operating nuclear power facility in the United States. Currently, these tests are conducted once every two years, even though once-a-year tests were the standard until 1985.

(3) As part of the licensing procedure for every commercial nuclear power facility, FEMA must find that public safety can be assured by the evacuation plan. This finding will be required after each annual test. If FEMA cannot make this finding,

the plant must cease operation until corrective measures have been taken, a new test has been conducted, and the finding is made that public safety can be assured.

This provision is particularly applicable to Shoreham, the controversial nuclear powerplant on Long Island in my State, FEMA's report on Shoreham contains no such finding. The NRC will be making its licensing decision in that case without a recommendation from FEMA.

(4) Finally, this bill requires that utilities bear all non-Federal costs associated with the annual testing of emergency evacuation plans, rather than by homeowners and local taxpayers.

Mr. Chairman, many of our citizens live in fear. Unfortunately, this fear is justified. Americans see what happened at Chernobyl and wonder: Could the same thing happen here? The GAO report demonstrating NRC negligence and ineffectiveness does nothing to allay fear. It is my hope that, in considering these proposals being discussed today, we can take a major step toward reassuring our citizens.

Thank you, Mr. Chairman.

Senator BREAUX. Chairman Zech, some have noted that Commissioner Rogers had mentioned in his statement and others have mentioned that one of the problems that the Commission gets involved in is rather lengthy procedures that must be followed by the staff in getting some of these policy issues to come before the Commission itself.

It seems that the problem is most severe in attempts by the Commission to address and resolve some of the generic safety issues that are the responsibility of the Commission, safety issues that are brought to light over the operating life of a particular plant.

This issue was documented in a recent GAO report that was prepared for Senator D'Amato, and I was wondering if you could elaborate on that procedural problem and the time that it takes to get these issues brought before the Commission as it is currently structured.

Admiral ZECH. Yes, sir. The generic issues that you are referring to, Mr. Chairman, are generally complicated and very complex issues. They do take longer to solve than we would like. We do have in place a committee for the review of generic issues that attempts to focus on these issues and give attention to their resolution.

The issues that we are talking about, again, involve uncertainties and involve some professional differences of opinion in engineering and scientific matters. They are not simple issues that can be resolved easily.

On the other hand, we are not satisfied that we are resolving them as fast as we can, and it is fair to say that we should attempt to resolve those issues faster, if we possibly can. I would only emphasize that many of them involve research efforts. The temptation, of course, is to resolve them and get them off the books, but perhaps that is not necessarily the right thing to do as regards our responsibilities for public health and safety.

Most of them are, again, the difficult, complex issues that we are facing. We are resolving them. They are getting resolved, I think, a little faster than they were some years ago. They are getting our attention, but there is no question that we want to do a better job in that regard.

Senator BREAUX. Let me ask you a question dealing with safety. If we created, as Senator Biden's bill does, an independent safety board to conduct these inspections, how would that affect the Advisory Committee on Reactor Safeguards? Would it be duplicative?

Would it necessarily have to be folded into an independent safety board? Can you give us some discussion on that?

Admiral ZECH. Yes, sir. Mr. Chairman, the proposal by Senator Biden, to form an independent safety board, in my view, and I think the majority of the Commissioners support me on this, too, is that it should not be an independent safety board, even if we have a single administrator.

Senator BREAUX. All right.

Admiral ZECH. The safety board should belong to the agency itself. Let me just say that as far as the AEOD is concerned and the ACRS (Advisory Committee on Reactor Safeguards). I envision that if a safety board were created, it would consist of part of the responsibilities from the Advisory Committee on Reactor Safeguards and part of the responsibilities of our current AEOD organization.

The responsibilities would be combined. I envision our current ACRS would, indeed, be part of the new advisory board. Also, the new board would need technical assistance from the staff of the AEOD organization. It is a complex issue. I am not sure, Mr. Chairman, whether forming that group and taking away some of the technical support of the staff would really, perhaps, not cause more harm than good. It could make the problem worse. It could exacerbate the problem, in my judgment.

So in my decision regarding a safety board, I think it is important to recognize that the Commission's primary responsibility, as Senator Simpson says, our only responsibility, is to involve ourselves with public health and safety.

I could see the case where that board would have a certain amount of responsibility, but not the authority. The agency would still have the authority. If you design a Commission with a single administrator, I would support some kind of a safety board if it were a part of the agency, though, Mr. Chairman, I think it should be designed very carefully and thoughtfully to recognize that the ultimate decisions, the safety of the American people, resides with the agency itself.

That board would be in a supportive role; could do investigations; could make recommendations; but it is awfully important to recognize that the agency itself has the accountability, the responsibility and the authority for making safety decisions according to the statutes of our government.

Senator BREAUX. I think there is a strong feeling, in creating a board, that it ought to be independent. There is no use to duplicate the efforts of the Advisory Committee on Reactor Safeguards to create another investigative board within the NRC.

I think there is a strong feeling that if we are going to do a safety board, it is going to be a safety board patterned after the National Transportation safety board dealing with FAA problems. There is no use to have two within the NRC.

That would be really duplicative. I am not sure that would really add anything to have an Advisory Committee on Reactor Safeguards in the NRC and in addition to that, create a safety board within the NRC. We don't need two.

We ought to do it one way or the other. Some have argued that a safety board, if we have one, have some sort of a threshold before

they become involved in investigative accidents or potential problems so that it, in fact, does not duplicate the Advisory Committee's role. Could that be made to work, i.e., the safety board would investigate the more serious accidents as opposed to the ACRS doing work on, say, a day-to-day basis of less serious infractions, if you will?

Admiral ZECH. Yes, sir. That is why I envision a combination of the ACRS current responsibilities with our AEOD, the Analysis and Evaluation of Operational Data organization. I would envision, Mr. Chairman, that you would have the ACRS continuing to perform their services for our agency. In my view, their services are needed. Their independent review, I might say, as far as the Commission is concerned, we certainly consider the ACRS very independent; their reviews and recommendations to the Commission are very important; and we must continue that.

But I would envision setting up a safety board that would include the ACRS; would include, perhaps, some additional members with perhaps more operationally-oriented technical capabilities. You would have a standing board, then, a safety board, which would continue to do the day-to-day, if you will, or the week-to-week, the month-to-month reviews that the ACRS does, but if that threshold which you referred to should occur, then I agree that that is the concept that should be looked into.

Then, if that threshold would occur in the case of some kind of an event, we could go to that safety board and pick out those members of the current ACRS and other members that we might add to that safety board, and from that larger board, we would form a group of the specific individuals who would investigate that particular type of accident that met the threshold.

So I can see the standing board having continuing functions to make their time worthwhile, but to have the capability of being organized into a group of investigators for the type of incident that would meet the threshold that we would want that board to look into.

Senator BREAUX. It sounds like you are talking about just one entity there.

Admiral ZECH. Sir?

Senator BREAUX. It sounds like you are talking about one entity there.

Admiral ZECH. One entity?

Senator BREAUX. One group.

Admiral ZECH. I am.

Senator BREAUX. You said one group comprised of ACRS and the next item that actually becomes more serious, the same group would conduct an investigation and wear a different hat?

Admiral ZECH. I am talking about one entity that is the safety board it could be our current ACRS board, plus additional members. They would continue to do and carry out the responsibilities of the current Advisory Committee on Reactor Safeguards, because I think we need those functions to be performed in the future.

I envision the safety board would be an expanded ACRS. If an event occurred that we would want to utilize a high-level safety board to review, you would pick, from that expanded ACRS board, those members that have the capability and the particular exper-

tise and those additional members that have additional operational expertise from that board. You would form the group of technical experts that would be used to investigate that particular incident. That is my view. That is my concept of what I envision would be the best way to proceed.

Senator BREAUX. Mr. Bernthal.

Mr. BERNTHAL. Mr. Chairman, I think the essential distinction here between commissioners and perhaps between your comment and those of the Commission is whether this board should be internal or external to the NRC.

I have never objected to the idea. In fact, I have supported the idea of an internal board of the type the chairman has just described if we continue to have a Commission form. Only in the circumstance that we have a single administrator would I support a new, independent external board of the type you describe, and I believe that that is exactly what the Kemeny and Rogovin commissions had in mind, as well.

I would simply make one other comment, and that is that I do not anticipate such a board is going to have a very large number of cases to consider. There have been pessimistic projections even from some former members of the Commission on how many such cases we would see, two, three, four per year, whatever the numbers have been. We aren't seeing that, and I don't really expect that we will see that. In fact, it will be very disappointing if we see two, three, or four cases a year that would rise to the threshold that you need such an investigation.

Senator BREAUX. Thank you very much.

Senator REID. Mr. Chairman? I am sorry to barge in in the middle, but I had a question that I wanted to ask and then go vote, but could I ask that at this time?

Senator BREAUX. Certainly.

Senator REID. This could be to anyone, but I will direct this to you, Mr. Zech.

Could a single administrator use a scientific advisory board to keep some of the good features that there has been? This would be similar to the EPA. They have a scientific advisory board.

Admiral ZECH. As far as a single administrator is concerned, Senator, I think as long as it is clear that he has the responsibility, the accountability and the authority to make public health and safety decisions, that it might be helpful for him to have such an advisory board.

I emphasize advisory board because to receive the views of those who can assist him in reviewing the decisions he makes might, indeed, be very helpful.

Senator REID. Do any of the other commissioners have comments about that? Mr. Carr.

Mr. CARR. Yes, I would like to take both yours and Chairman Breaux's comments in. I think there is a distinction that has got to be made between the ACRS or the Advisory Committee on Reactor Safeguards and the proposed safety board.

The Advisory Committee on Reactor Safeguards today functions in the pre-accident role. They are there to try to keep accidents from happening; advise on designs; advise on a multitude of things that come up so that accidents don't happen.

The safety board, per se, would act after the fact. They would be involved only after the accidents happen. I think the Advisory Committee on Reactor Safeguards does just what you say you would want from a scientific advisory board. That is the kind of people on there that you would assemble to advise you. I would certainly, if it were a single administrator agency, say that the ACRS should be part of it.

Senator REID. Thank you, Mr. Chairman.

Senator BREAUX. Thank you, Senator.

I know this is not a subject of the hearing, but I want to talk a little bit about nuclear waste, because we are getting ready to debate it on the floor of the Senate.

I have been corresponding back and forth with the Commission, so I know it is a subject that we are very familiar with. In some of the responses that we have received from the Commission, Admiral, regarding our questions on the issue of surface base testing of the candidate repository sites for nuclear waste disposition, prior to the selection of any single site, the Commission has taken the following position, and I quote from some of the material that we have received from the NRC:

> NRC believes that it would be desirable to focus on surface-based testing in cases where: A, shaft construction would render necessary surface testing impossible or meaningless; and B, that such testing would reveal information about the site suitability important to know before major resources are committed for shaft construction.

Along that line, in an analysis prepared by the NRC's staff for the Commission members on the issue of selecting a single site for characterization and on the time of when such decision could be made, the staff reached the following conclusion on the technical aspects of this issue by saying,

> The existing data base for the three sites selected for characterization is limited, and at this stage of the site investigation and screening process, there is inherent uncertainty in site information that can lead to alternative interpretations of the data.

They continue by saying,

> If DOE were required to perform a program of surface-based testing prior to choosing a preferred sites the Congress would have greater assurance that the first site to be choeen for characterization would be licensable.

My question, after presenting that is: Do you agree generally with the statement that in light of the amount of information currently available, what your staff refers to as limited information, that a program of surface-based testing would be prudent and give you a higher degree of information in order to have confidence that the site selected would, in fact, be licensable?

Admiral ZECH. Mr. Chairman, I agree with that statement. Let me just elaborate very briefly.

I think, as I view this very important matter, the staff is trying to tell the Commission that if the DOE does surface-based testing at a number of sites, it is just, in their view, a better approach than if they only do it at one site.

On the other hand, I think the staff has said, and I would agree too, that it would not be necessary to do that. It would be necessary, perhaps, only to do it at one site. We are the licensing agency. We are the regulators. We are the ones that are going to have to

eventually say whether we agree that public health and safety can be protected by the site selected.

So from our viewpoint, we certainly recognize that if the number of sites for surface-based testing is cut to one site, it is very possible to eventually perhaps find that site acceptable. On the other hand, because of the many uncertainties and the technical breakthroughs in certain areas that we are looking at, we would feel more comfortable having more than one site looked at because of the possibilities that one site may prove unacceptable.

We are not the ones, Mr. Chairman, as you know, from our standpoint, to be involved in site selection. We recognize that is DOE. But I think it is a reasonable action to point out, that even though we would have no objection to going ahead with testing only at one site, could eventually say that the one site is not acceptable. I think it is just a conservative approach we are taking to say that more than one would give us more confidence that we will probably be able to conclude that we have an acceptable site.

But site selection is not our business, it is just our business to point out that we just might conclude that one site is not acceptable; we prefer more than one.

Senator BREAUX. The staff went on to say, with regard to this subject as to whether the surface-based testing may be necessary prior to sinking the exploratory shafts, they said that,

> Surface-based testing would be appropriate where a shaft construction could result in the inability to obtain data pertaining to the local groundwater flow system. Failure to conduct these tests may increase the difficulty in resolving the repository licensing issues as early as practicable. In addition, the surface testing may reveal potential licensing issues at a site which would render further testing in our shaft sinking unwarranted.

I guess that is an elaboration of what you were just saying with regard to the type of potential problems that the surface-based testing would potentially reveal.

Admiral ZECH. Yes sir, it is. You are exactly right, Mr. Chairman. What we are pointing out is that there are uncertainties and there could be problems, and the odds are that if you do more than one, your chances are better that you are going to have a successful one. We are simply pointing out that we are not going to license any depository unless we can conclude that it is acceptable and is adequate protection for the public, and we are pointing out that there is some risk in just going for the one site for the repository.

On the other hand, I think from an technical standpoint, from a safety standpoint, we cannot say that going with only one is technically the wrong way to go; we are just pointing out the risk of kind of putting all your eggs in one basket.

Senator BREAUX. The staff report that I reviewed continued by pointing out that such testing would likely provide sufficient geologic and hydrologic and engineering data to evaluate potential fatal flaws and develop a basic understanding of each site's characteristics so that more informed judgments could be made on the selection of a particular site or shaft sinking.

On the issue of whether we are ready to sink an exploratory shaft at all three of the sites that are now under consideration, would you agree that the surface-based hydrologic testing at the Hanford site, something that the NRC has proposed and that I

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think DOE is now planning to undertake, should be completed before you are ready to sink an exploratory shaft at Hanford?

Admiral ZECH. It is my understanding that we do feel that way, Mr. Chairman. Again, we are trying to point out, and I believe it is a responsible action on our part, to point out any potential problems that we can see and be as definite as we can in our determinations before we spend an awful lot of money and go so far as to have to make a determination that these will be unacceptable.

Again, I think we are trying to point out, staying within our technical and safety responsibilities, the risks involved, the problems that we see, but we are not trying to prejudge. What we are saying is that in the case of putting a shaft down or surface testing, whatever it may be, that I believe our position has been rather consistent and a conservative approach.

We would prefer to have as much knowledge as we can and as little risk as we can and point out where we see there might be pitfalls in the approaches we have.

Senator BREAUX. With regard to the Deaf Smith site in Texas today, does NRC feel that we have enough information on hand to sink an exploratory shaft? I know that there are plans, apparently, to conduct additional geophysical and, perhaps, bore samples at that particular site that have not yet been done.

Do we have enough information from a standpoint to go ahead and sink an exploratory shaft at that site?

Admiral ZECH. Mr. Chairman, in answer to your question, I don't know. I would, frankly, have to call on my staff to respond. I am just not certain.

Mr. BERNTHAL. Mr. Chairman, if I could just make a comment, I agree with what the chairman has been saying. It is clear that you gather a certain warm feeling if you characterize more sites. It would be better to do five or seven, perhaps, than three or two, all of which are better than one.

There are two questions however: One is whether we are going to seek the very best possible site that man can devise or can find, or a wholly suitable site. That is one question. The second question is whether there are finite odds that any of these sites will fail in characterization, and I am sure there are certain odds that each of them might fail.

You simply can't answer the question, though, of how you ultimately will save time. If you will tell me the odds of success at each site on average and how long it will take to characterize three sites as opposed to one site, then I could probably give you some estimate of the odds if you are actually going to save time if you characterize three rather than one.

That is a rather numerical and objective point of view, but I think it is true. You simply don't know unless you have a good idea of the odds that a given site will fail and the rapidity with which DOE can characterize three sites as opposed to a single site. You simply don't know whether you ultimately will save time or lose time by doing one instead of three.

Senator BREAUX. I am not just concerned about how fast we do it. I am also concerned about how safely we do it.

Mr. Stello, did you have a comment about the Texas site? I note you were discussing it.

Mr. STELLO. I would indicate that we do not yet have enough information to decide whether or not to go with an exploratory shaft or where. I don't believe we even have real access to the site yet, so there is more information that would be needed, in my view, before we could go forward.

Senator BREAUX. Do you have any idea of the timing of when that information could be available?

Mr. STELLO. No, sir.

Senator BREAUX. Mr. Carr.

Mr. CARR. Yes, I think it is the staff position, certainly, it is my position, that it is reasonable to go with a surface characterization all you can before you get ready to put all the money into the new shaft. So I think their position is go ahead and attempt to rule out, if we can, from the surface anything before you start digging deep holes.

Senator BREAUX. Senator Reid, do you have a question?

Senator REID. Thank you very much, Mr. Chairman. I appreciate your going into this area.

I also appreciate, Admiral, the willingness, even though it hasn't been easy, I am sure, to answer these questions. I say that because I think one of the big problems we have had in the past in this country with nuclear waste is interagency resistance to go some place that maybe they aren't sure they are supposed to go. That is, in my opinion, one of the reasons that we now have them and we keep them. They are well hidden.

But we have some real disasters on our hands now, the problem in Kentucky at Maxi Flats; the problem we have at Savannah River at the Georgia-South Carolina border. When I say disasters, I mean some real messy situations we have to clean up, and the one outside Buffalo, New York, to name just a few. So I appreciate your answering the question.

I would respond to Mr. Bernthal and your statements, which I think are also part of the problem. We now have a law passed in 1982, after years of compromise and a lot of work, and it was the considered opinion of scientists and, ultimately, the Congress and the President, who signed the legislation, that it would be appropriate that you characterize three sites all at the same time, and, in fact, you would go ahead and sink shafts at the three locations, so that not only may it cost a little bit more money, but when we are dealing with nuclear waste, you would you want to make sure it is safe, because not only does it have to be safe, but it has to be perceived by the American public to be safe.

Those are two separate problems that exist. Therefore, if you characterize the three sites, you really wind up with a better situation. Of course, the only way that they can be characterized is that you do the surface-based testing; you have to do that. That way, when the process is completed, you have complied with the law that took a long time to develop.

Now, what we are doing here in the Senate and to a lesser degree in the House, while the 1982 Act is expensive and we may get lucky on the first site, we pick Yucca Mountain in Nevada, and it may be a site that is okay and then we don't have to bother with the other two. But in the minds of the people of the State of Nevada, the people in the State of Washington and the people in

the State of Texas and the rest of the country, what we want is one that not only is the best, but is perceived by the country to be the best, and based on your statement, Mr. Bernthal, that is the only way we are going to do that, is if we follow the law and do the surface testing and do the on-site characterization at all three.

I appreciate that statement you have made. I would say this, without getting into specifics of the legislation that is now pending, and I don't think that is necessary, because I think it has been established here this morning. I would only elaborate on what Chairman Breaux said: Saving time is not the key issue in this regard.

I can remember, as a young boy, getting up real early in the morning. It was still dark, not once or twice, but lots of times, and I was located, probably, 100 miles or 125 miles from the site of an atmospheric nuclear device being set off. We would watch that and it would light up the sky, and we would count to see how long it would take before the noise got there, but I was one of the lucky ones, because the fall-out blew up toward Utah, it didn't go toward Nevada, so we were okay. We don't have a very real high incidence of cancer, but of course, in southern Utah, the highest in the country is there in southern Utah.

I think one of the reasons that we have those problems is we were in a hurry; we were trying to save time; we really didn't know what the effects or at least I hope we didn't know what the effects of the fall-out would be.

So I appreciate you as an agency, and I am saying that on a cumulative basis, making an opinion rather than saying, "Well, that's not our business. Legislation is pending, and all we are is a licensing agency, and we will issue a license."

Because it doesn't take a nuclear scientist to tell me that if we spend billions of dollars on one site, there is going to be tremendous pressure on you as an agency to make sure you license that site.

Now, I know that you will, I would hope, rise above it all and not let the fact that we have only one site and again, we have a time factor because we have to start all over; it is going to take a lot of time, but that is what we are faced with. Time can't be the key area in this instance, nor can the money, because we are dealing with, really, a poison; in fact, one of the most poisonous things that has been devised.

Mr. Chairman, I appreciate your going into this area. It has been most helpful to me, and I think it will be to our deliberations here in Congress.

Senator BREAUX. Thank you, Senator.

Let me also thank him also for his very active participation in these hearings, and you will be very helpful in trying to develop the policy we are trying to put out.

Mr. Carr, let me ask you the last question. I take it from the response to one of my questions that you were generally interpreting what the staff's recommendation was, which was to recommend surface-based work to be done prior to the characterization of the sites.

Mr. CARR. Prior to the shaft.

Senator BREAUX. Prior to the shaft being sunk at any of the sites.

Mr. CARR. Yes. Yes, sir.

Senator BREAUX. You said, also, I think, that was reflective of your general opinion?

Mr. CARR. Certainly, yes.

Senator BREAUX. I would like to ask the other Commission members whether that is also their position; or do any of the other Commission members differ from what Mr. Carr said?

Admiral ZECH. I think you are referring to my position, yes, sir. I think I have really pointed out that from a standpoint of a conservative approach, we would rather have surface-based testing at three sites. We would feel a little bit easier, because we are just pointing out, and to address Senator Reid, I can assure you that we are not going to approve a site that we are not confident can protect the public health and safety.

If we test one site and it doesn't work, we will do what we think is right.

Mr. CARR. You would have to acknowledge from an agency standpoint, the pressure would be severe.

Admiral ZECH. It would be severe. It would be very severe. Yes, sir, I acknowledge that, but I would like to think that we would have the courage to do what we think is right, and I am confident we would. That was my thought.

Senator BREAUX. Mr. Roberts.

Mr. ROBERTS. I agree with the chairman.

Senator BREAUX. Mr. Bernthal.

Mr. BERNTHAL. I agree with what the chairman has said. I stand by my comments, though, other things being equal, and I hope and trust that the "other thing" being equal is that the standard of the NRC on safety remains the same. But you are absolutely right. If you spend several billion dollars and find out late in the process that you picked the wrong hole, then the pressure would be intense, no question about it.

Senator BREAUX. Mr. Rogers.

Mr. ROGERS. Yes, I agree.

Senator BREAUX. My last question is: Has the Commission ever endorsed the January 1st, 1989 date as either an acceptable date or as the most appropriate date for making the decision to select one of the three sites?

Mr. Chairman.

Admiral ZECH. I am not sure that we have a position on that.

Mr. STELLO. My recollection is that we don't.

Admiral ZECH. I am informed that we have not, Mr. Chairman.

Senator BREAUX. Gentlemen, we thank all of you for being with us. You all have been very patient, as I say. You have attended all of our hearings. We thank you for it. You have, I think, answered the questions in good faith and with a good sense of working with the Committee. That is our feeling as far as wanting to work with each and every one of you, and we look forward to final completion of the legislative proposal.

Thank you.

We have two panels we would like to hear from. The first panel is Ms. Ellyn R. Weiss, General Counsel of the Union of Concerned Scientists and Dr. E. Linn Draper, Jr., the Chairman, President and

Chief Executive Officer of Gulf States Utilities Company from Beaumont, Texas.

Ms. Weiss, we have your statement. I would ask that you all summarize so that we can proceed to questions.

STATEMENT OF ELLYN R. WEISS, GENERAL COUNSEL, UNION OF CONCERNED SCIENTISTS, WASHINGTON, DC

Ms. WEISS. Thank you, Mr. Chairman. The NRC is, in our view, at a low ebb. We believe that it is unable or unwilling to ensure that the high standards required of industry it regulates are met.

I would like to discuss for a moment what we think is a good example. It is the on-going case of the Babcock & Wilcox plants. These are reactors whose designs are particularly sensitive to failures that would be innocuous in other pressurized water reactors. This has been shown by a history of accident after accident, both before and after TMI.

By the NRC's own admission, despite the modifications made to these plants after the TMI accident, the number and complexity of events has not decreased as expected.

As a result of two accidents in 1985, one in California and one in Ohio, the NRC stated in January 1986 that a basic reassessment was needed of the overall safety of the plants and of the adequacy of the NRC's rules to ensure safety of those plants.

NRC promised that it would complete its reassessment by the end of 1986 and identify the needed improvements. Instead, within a few months, the reassessment responsibility was turned over to the owners of the plants in 1986, and 1986 came and went with no resolution of the basic questions. By July 1987, the owners' group had issued 178 recommendations, including 73 which they termed "key".

However, the vast majority of these recommendations have not been implemented, and it will be years before they will, if ever. In the case of Rancho Seco, whose December 1985 accident happened to provoke the Babcock and Wilcox safety reassessment in the first place, the owner of the plant has decided to postpone implementation of 23 of the key recommendations until after the plant has restarted.

Among those that won't be implemented at Rancho Seco before operation resumes are: One, to determine whether motor-operated valves and safety systems are the correct size; two, to review the maintenance procedures to ensure that motor-operated valves and safety systems are capable of performing as required during an accident.

During this period, NRC has played the role of an observer on the sidelines. After proclaiming that the safety of these plants is a matter of great concern, it seems content to passively allow the owners to decide to forego key changes for years.

Another of the agency's most striking deficiencies is its failure to promulgate guidelines for determining when a plant's safety violations are so serious that that plant must be shut down. This is documented in a September 1987 GAO report, which also states that despite thousands of safety violations annually, NRC does not con-

solidate the information to evaluate safety trends or determine the status of corrective actions taken.

I have mentioned only a few chronic problems, but there are others. No reorganization or legislative direction can, by itself, instill the proper attitude of an arms-length regulation. We are convinced there is no magic bullet that will ensure that the NRC theats protecting the public safety as its overriding obligation. We believe the best tool for enhancing the public's safety lies in creating a better system of checks and balances, improving public participation and increasing Congressional vigilance of NRC standard-setting and general operations.

Part of the problem is institutional, as the various proposals before this committee recognize. The NRC staff puts its official stamp of approval on each currently licensed plant and is responsible for those in the pipeline. To concede that a safety problem is overlooked at any plant raises questions about the safety of others and about the quality of the agency's own judgment.

Therefore, independent checks and balances are needed. The independent safety board and the Inspector General, if properly set up, would provide needed checks and balances.

In the past, we have questioned the idea of converting NRC to a single administrator. We still have questions, primarily because it would seriously erode public access to the agency's decision-making, take the public's business further behind closed doors, and increase the already unhealthy dominance of the agency's agenda by the regulated industry.

Yet we have also come to realize the commission system is no panacea, and we agree with Senator Simpson's remarks that the current approach has resulted in the lack of any real responsibility to be vested in a single member and carry out a decision and a corresponding lack of any real accountability to any single individual for the decisions of the agency.

The agency is institutionally ill-suited to conduct and follow up investigations because there is an inherent conflict of interest involved when it investigates its own conduct, and this conflict is represented in virtually every case since the agency's conduct is implicitly or explicitly in question whenever an accident occurs.

USC supports the concept of a safety board contained in S. 14, which envisions that the board would not only respond to accidents, but also review regulatory and licensing procedures with an eye toward enhancing safety and avoiding accidents, along with the requirement that the Commission respond to the recommendations of the board within an established period of time, 90 or 120 days.

We believe an Inspector General at NRC is long past due and applaud the efforts of Senators Glenn and Simpson to establish one. We specifically would recommend that the I.G. could not be prevented or prohibited by the commissioners from initiating, carrying out or completing any audit or investigation or from issuing any subpoena.

One of the differences between the Glenn and Simpson bills is how the Office of Investigation or OI is treated. In Senator Glenn's bill, the office of the I.G. contains OI, while Senator Simpson's bill is silent on the subject.

We believe that Congress should legislatively address the problems the OI has been experiencing, as brought to light in hearings before this committee and the Governmental Affairs Committee and documented in the reports of those hearings.

The Commission has gone to elaborate lengths to intervene in OI investigations. Without congressional intervention, these attempts to confine, filter and delay investigations will continue to hamper the OI's effectiveness.

Legislation providing a statutory authority for OI should codify its current authorities and should explicitly provide it with adequate subpoena authority, the right to self-initiate cases and the right to refer cases to the Department of Justice.

Additional congressional activity is necessary to strengthen public protection. For example, the law should be amended so that not only is the NRC required to report on unresolved safety issues, but it is required to resolve them. Also, given the GAO's finding that NRC lacks guidelines for determining when safety violations weren't shutting down a plant, Congress should require the promulgation of such guidelines and direct that they be followed.

If Congress is dissatisfied with the job the NRC is doing, and I believe that it is, the answer must go beyond structural changes.

Congress must oppose the Agency's attempts to weaken public safety and restrict public access. It must insist on reasoned, objective guidelines for determining when safety improvements are needed and when operating plants pose undue risk to public health and safety. There is no quick fix for the NRC.

We support the I.G., independent OI and safety board, and we recognize that benefits can be gained from a single administrator.

These can only be considered a first step toward getting NRC and the industry to higher standards. We hope this Committee's efforts on structural reform expand to a review of the guidelines, standards and regulations which the agency uses to circumvent its public safety mission.

Thank you very much, Mr. Chairman.

Senator BREAUX. Thank you. Go ahead, Dr. Draper.

STATEMENT OF E. LINN DRAPER, JR., CHAIRMAN, PRESIDENT, AND CHIEF EXECUTIVE OFFICER, GULF STATES UTILITIES CO., BEAUMONT, TX

Dr. DRAPER. Thank you, Mr. Chairman. I would like to thank you and the members of the Subcommittee for the opportunity to speak to you today about the legislation that is pending that deals with the reorganization of the NRC.

I am the Chairman, President, and Chief Executive of Gulf States Utilities, where I have been employed since 1979. Prior to that, I spent about ten years as the head of the nuclear engineering program at the University of Texas; I am also Past President of the American Nuclear Society and am appearing today on behalf of the American Nuclear Energy Council, the Edison Electric Institute and the Nuclear Management and Resources Council.

We believe it is appropriate and timely for the Subcommittee to take a hard look at the organizational structure of the NRC and related aspects of the underlying nuclear regulatory program.

As background to our specific comments on the legislative measures before the Subcommittee, I would like to underscore certain principles that shape the nuclear industry's position. Foremost among them is the need to assure that any change to the NRC structure is compatible with safety interests.

Coupled with this is the clear recognition that if we are to have a viable nuclear power program, we must assure that there is an effective, credible nuclear regulator. The nuclear industry's broad-based efforts to upgrade performance through self-improvement and to aggressively pursue industry-wide operational excellence are not intended to supplant regulation but to complement it and thereby advance the safety goals which both the NRC and the industry share.

In keeping with those basic precepts, we urge that in considering organization changes:

1) The change to NRC's management or office structure should not simply be reactive to problems of the moment. Any changes should be legislated only after thorough consideration of the operational consequences for the agency and for the regulatory program.

2) There should be no piecemeal approach to organizational change. Proposals addressed to individual NRC offices or functions should be considered in the context of the best overall structure for the agency.

3) We feel that the NRC should not be cannibalized. Change should not disperse or dissipate the agency's regulatory resources.

4) Change should not result in duplication of NRC's regulatory function and,

5) Change should not produce confusion of regulatory authority. NRC, or any successor agency, must be maintained as the sole body responsible for safety regulation of nuclear power activities.

Moreover, many of NRC's problems for which organizational change has been proposed as the appropriate response have been produced by a licensing and regulatory process that long ago ceased to match the technical capabilities, safety aims and national needs. That process should be reformed at the same time Congress tackles organizational change.

The needed reforms are well-known and widely-endorsed: standardization, pre-approval of nuclear plant designs and sites and consolidated construction permit and operating license.

Speaking specifically of the suggestions to change from a commission to the single administrator, I think Senator Simpson's statement introducing S. 1770 forcefully depicts the frustration and underlying organizational shortcomings. He also portrays the present Commissioners as we would: Hard-working professional public servants struggling to perform their task in a structural straight jacket. Thus we have also come to conclude that organizational change is needed and that the single administrator is a viable and potential improvement that merits thorough and careful consideration.

We must emphasize that any fundamental alteration to the nuclear regulatory agency should be coupled with thorough reform of the licensing process. There are clear advantages to a single administrator, one of which is improved management. Replacing the five-

member Commission with a single administrator, most observers agree, would significantly improve the agency's management. A single administrator, who alone would possess full responsibility and authority for agency operation, would be able to manage the agency more effectively and take decisions on a more timely basis than a commission in which authority and responsibility are diffused.

Second, the agency would benefit by improved and more timely policy formulation. A major criticism made by post-TIM studies, including one conducted by the General Accounting Office, was that the Commission failed to effectively control regulatory policy-making. Faced with the interpersonal and institutional obstacles inherent in arriving at consensus positions, the Commission confronts the dilemma of either having long delays or letting policy-making fall by default to action by the staff.

A third major deficiency of the current NRC structure and from a public policy standpoint, perhaps a more disturbing one, is that by diffusing responsibility, it diffuses accountability. As contrasted to the current collegial situation, where no one individual is in charge, a single administrator, and the President who appoints that official, would be fixed with unmistakable accountability for agency performance. Experience tells us that accountability is a powerful motivator and safeguard.

There are also opposing arguments to a single administrator, which I think merit consideration. One is that a major argument that would militate against a single administrator is that the current commission structure provides for diversity, both in decision-making and in policy-making. Proponents contend that the controversial nature of nuclear issues warrants a collegial body to reflect differing viewpoints.

But as Senator Simpson points up,

> The value of bringing diverse views to bear, in a collegial context, on the licensing and regulatory issues facing the Commission, has all but been hopelessly lost.

That judgment is supported by the stated experience of both present and past Commission members, individuals whose service spans virtually the entire lifetime of the NRC.

A second issue is public visibility. It has been argued that a single administrator would reduce the public visibility of the policy-making process. A single administrator clearly would not be subject to the strictures of the Sunshine Act. We hardly think this decisive, however, in terms of the openness of the regulatory process.

NRC rulemaking would continue to be conducted under the public notice and comment procedures mandated by the Administrative Procedure Act. Moreover, the licensing and regulatory process, as a whole, would still be open as it is today to public scrutiny.

Thirdly, there is the major concern about a single administrator structure with a resulting potential for instability in the regulatory process since agency management and policies would be subject to change with each new administration.

The concern should be tempered, however, by a recognition of the practical constraints on radical change. There are several other

proposals for organizational changes that I would like to speak to very briefly. As a guiding bedrock principle, we strongly believe that responsibility for nuclear power safety and regulation should reside in a single body, one which possesses the authority and resources and expertise to discharge its safety mandate and is accountable to the political branches of government for the exercise of that mandate.

Establishing other agencies or functionaries with independent, cross-cutting or overlapping regulatory missions is a prescription for divided authority, contention, confusion, and safety matters and regulatory instability.

Inconsistent signals can detract from safety. In the written presentation that I have made to you, I speak in some detail about both the independent Inspector General and the idea of a nuclear safety board. I won't repeat that.

I will conclude, however, by saying that we believe that organizational reform of the NRC should not be conducted in isolation from the underlying regulatory program. The failings and frustrations of the current process have been extensively and painfully documented before the Congress, including prior hearings of this Committee.

The process now given statutory sanction by the Atomic Energy Act of 1954 is unstable in its requirements, unpredictable in its application, open-ended in its cost exposure and it provides for public participation at a time and in a manner which badly serves public, industry and regulatory needs.

Their current licensing regime, fashioned 30 years ago, to accommodate a design-as-you-go approach to nuclear power plant construction simply makes no sense today.

The American public has demanding expectations of the nuclear power program, and rightfully so. It expects exemplary operational performance from the nuclear power industry, effective oversight by its regulators and a regulatory process which is supportive of both requisites.

The nuclear industry is fully committed to meeting its performance obligations through individual efforts and the collective efforts represented by INPO, EPRI and NUMARC. Effective regulation requires both a workable NRC organizational structure and a sensible regulatory process, one matched to safety requirements, technical capabilities and the nation's needs.

In our view, legislative changes will be necessary to bring this about. However, we urge the Congress to resist piecemeal changes and consider comprehensive procedural, as well as structural, changes.

We welcome the opportunity to submit our views on the steps to be taken, and we offer our continuing cooperation in their further Congressional consideration. Thank you.

Senator BREAUX. Thank you both very much.

Mr. Draper, I take it from your testimony with regard to the concept of an independent administrator that you have said that some of your friends are for it and some of your friends are opposed to it, and you are kind of with your friends.

Dr. DRAPER. The nuclear power industry is no more of a mind than the United States Congress, I think. There are people who favor the current system of a commission; others who favor a

single administrator. I think we are united in the thought that regardless of the organizational structure, it is clear that it is important you have a single agency in charge with the authority and the responsibility.

I personally believe that a single administrator is preferable. That sympathy is not shared by all of the people in the nuclear business.

Senator BREAUX. I got that from your last statement where you say, whether the NRC is reorganized into a single administrator or a strong chairman, that the result should be to focus responsibility and accountability on the chief executive office of the agency, and I think that is sort of what we are trying to attempt to do by some of the bills. I know that Gulf States has made that decision. You serve as Chairman, President, and CEO, so you don't operate your company with a commission. There is no question about that.

I think that the private sector would very seldom try and operate a corporation the size of yours or any others, really, with a commission for some of the same reasons as the problems we are experiencing with the Commission.

Dr. DRAPER. I think that is precisely right. We certainly welcome divergent points of view and discussion of those issues, but ultimately, someone must be in charge and held accountable for the actions that are taken.

Senator BREAUX. Ms. Weiss, I see some semblance of change with regard to your position. I noted that your organization was very strongly opposed, apparently, in the beginning, but now, I think after looking at it, I am not saying you strongly support it. I think I have taken from your testimony you are looking at it from a different standpoint.

Ms. WEISS. I think that is fair, Mr. Chairman. There are advantages; there are disadvantages. They have all been rehashed here today. I think it is possible to see this year the elements of a package of which a single administrator might be part. That would make things better at the NRC, and it is our view that they are pretty bad right now.

Senator BREAUX. On the question of an Inspector General, something that Senator Simpson and I have been visiting on, and others, with regard to looking and investigating the internal operations of the NRC itself versus the question of investigating the licensees for wrongdoing on the part of the licensees, there are some, and I think I fall in that category, that say that one of the functions of the NRC is to investigate wrongdoing by people they regulate. That is the very essence of an agency of the government which is in charge of regulation; to make sure that those they regulate, in fact, follow the regulations.

Therefore, the argument would be, with someone who agreed with that theory, is that it is appropriate to take the investigations of the operations of the NRC itself outside of their authority, create an independent investigator, but to leave the responsibilities of investigating their licensees within the NRC, because indeed, that is their function, and if you take that away from them, you have taken away the essence of why they exist in the first place.

Do you have some comments on that?

Ms. WEISS. I guess I think that NRC is a special case. Normally, Inspectors General do only have the functions of internal investigators, but I think that we have a historical record in the case of this agency that is well documented in the report of the hearings of Senate Government Operations this year of impeding the independence of the Office of Investigations, the external investigators, time after time, trying to delay them and direct them and deprioritize them and bring them under the wing of people who don't seem to be interested in enforcement.

I think that makes a strong case for combining the functions of OI to OIA and putting them both in the Inspector General office.

Senator BREAUX. I appreciate that concern. I think it is a legitimate one, but could it not be corrected by clear statutory mandate as to the functions and how they should carry it out.

Ms. WEISS. I think it probably could so long as you also took care to ensure that the person in charge of the office got to select their own staff and certain other protections like that so that you could not do indirectly what could not be done directly.

Senator BREAUX. I thank you again for your comment.

Dr. Draper, I think Gulf States has made a good choice in selecting you instead of a commission.

Dr. DRAPER. You are very kind.

Senator BREAUX. You do a fine job, considering the problems your company is facing.

Senator Simpson.

Senator SIMPSON. Thank you, Mr. Chairman.

Well, I want to commend you, Ellyn Weiss, for what I think is a pretty well-balanced statement. You and I have had some combat in here before in the trenches, in this area, for some time, 7 or 8 years, as I recall. We have had some spirited debates about the direction of the Commission and the organizational shortcomings of the Commission. I think we both seem to agree on one thing, that the existing Commission organization and our approach to regulating the nuclear power industry just isn't getting the job done.

I was also pleased to see that there appears to be some ground for discussion on how to handle the Inspector General and the Office of Investigations issue, and I thought your suggestions in that area have a good deal of merit.

I mostly see that you say that there are "some benefits" was the phrased, couched there, that could be gained from a single administrator. You know fully what ay position is and has been on that. It does not reflect upon the present group at all. I am not talking about them as persons; I am talking about the organization.

I wonder if you could just summarize, at least briefly, because I know you have given this a lot of thought. Even though we are on opposite sides, you are a thoughtful lady. If you could summarize what you see as the principal advantages and disadvantages and what steps could be taken in the context of a single administrator agency to allay some of the concerns that you still have about this structure.

Ms. WEISS. Well, the advantages are, obviously, efficiency and accountability, and I am convinced that those are two important advantages.

The disadvantages are the loss of coverage of the Sunshine Act, the unavoidable movement of decisions behind closed doors, and also, the potential disadvantage that the decisions that you are making in a more expeditious manner are the wrong decisions. I mean, you want to make sure you are making the right decisions, so long as you are making them more efficiently.

The problems with the agency aren't just at the top. So when you talk about how you fix up the problems, you have to deal with it beyond the top. I am convinced, and I have spoken of it before, that there is an institutional dynamic at work from the agency's 25 years of history of approving all its operating plans and signing off on their safety and on the ones in the pipeline, and that any time there is an accident or the need for whatever reason to reconsider whether these plants are adequately safe, there is always implicitly involved a question of passing on the prior judgment of the agency.

If you made a mistake before, it is hard to admit that, and it is hard for any group of people to do that. I think that shows up just in how long it takes getting anything done at the NRC when it is a question of change. That is why I think that the safety board, an independent safety board, is absolutely essential at the NRC. If it is not independent, there is no point in doing it. As one of the members of the ACRS remarked on reviewing the proposal in 1985, an independent investigatory arm within the agency is a contradiction in terms, and I think that that is clearly true.

I also think that we need to strengthen enforcement, and we need the I.G.

Senator SIMPSON. You have heard me speak about collegiality and the way you have observed this structure in years past. How much collegiality do you think actually goes on in the Commission, and how much of that is visible or open to the public?

Ms. WEISS. I don't see a lot of collegiality. On the other hand, it is extremely valuable to see the discussions between the staff and the Commission at the Commission meetings. That is how we tell what are the important issues in the minds of the Commissioners as they move towards deciding on some policy.

Senator SIMPSON. But you see those procedures, and you know what those procedures are between the staff and the legal and technical assistants, and is that really the kind of forum that the American people think is going to provide an independent collegial decisionmaking and thoughtful regulation?

Ms. WEISS. No, I don't think that having five people with or without collegiality ensures thoughtful regulation. Because we have had for many years not much visible deliberation. I would go beyond collegiality.

Senator SIMPSON. Many of the major issues, issues that you have been interested in over the years involving the organization, have been assessed or addressed through the Commission tracking system, which is a dazzling phrase in itsetf, or in closed meetings, and how much public access, then, in the decision process do you have in that kind of thing, and then the memorandum notation system and so on, and that type of thing?

I don't see, if we are looking for a truly diverse set of commissioners and collegiality, public health and safety, and the nature of the political appointment process, I think it is time to move on.

This is the only agency left except the Consumer Product Safety group, and they are trying to bust them up now into a single administrator. It is the only one left, and there is a reason for that; fear of atomic energy?

I know what all this is. I have been here, now, 9 years, but the greater fear ought to be that it can't work. As I have said, the worst thing will be when we have a fracture and these five people are led into a 12-camera hearing; we will know where we have been as far as public confidence goes, anyway.

Ms. WEISS. Let me just give an example of what we will lose, because we will lose something valuable, which is not to say that it might not be offset by the gains, of you do this right, but we will lose something valuable.

Last week the Commission had a meeting on its proposed emergency planning rule change. Without going into the merits of that, there were a couple of hours of discussion which illuminated, when we sat there, when we sat there in the audience and we went back and read those transcripts, and they are scheduled to vote today, we saw that there are very important questions about what is the meaning of this rule and do the Commissioners have the same understanding of the words that we have of those words?

That prompted several of us to write letters to ask the Commission for clarification, to seek an additional comment period. I mean, there is going to be a certain amount of that that is lost, and it is not totally to be discounted.

Senator SIMPSON. In my association with you over these years, I think I see a better opportunity to work closely together and get something done than we have had before.

Ms. WEISS. We would welcome that. I think that is fair.

Senator SIMPSON. I think that can be done.

I have just one question of Dr. Draper, then. Based upon your experiences, and they are vast, in the past 7 years, including your experience with changes on Reorganization Plan No. 1 of 1980, I wonder if you could just give us remarks very briefly as to whether the NRC, as an institution, as you have observed it, is in any better position today, right now, than it was right after TMI to regulate the commercial nuclear power in a safe and effective manner, and again, focusing only on the organization, not the people or the decisions that have been made since TMI.

Dr. DRAPER. In my view, there is no question that it is in a better position now than it was immediately after TMI. I think that the assertion of additional authority by the chairman, the vesting of responsibilities in the Executive Director for Operations, are all directionally correct.

My concern is that they haven't run far enough. I think we still don't have the appropriate type of accountability. I do believe that nuclear plants are more effectively regulated than they were eight years ago, but I think there are still deficiencies that need to be addressed.

The nuclear industry is amxious to have very stringent but predictable regulation. That is our objective. We can live with very stringent regulation. What we can't live with is uncertainty, the sorts of things that we experience when there is not a clearly articulated point of view that will withstand the test of time.

Senator SIMPSON. I think we have an opportunity here, when the chairman in his role doing a very good job of hearings and putting material together, to come up with some kind of a reform package that could blend in some things that are Joe Biden's efforts and what Dan Evans is saying and the Inspector General and codification of the Office of Investigations, fact finding, safety. You know, there is lots of things I think we can do, going on to standardization and licensing reforms and some other things which are not the subject of this hearing.

But we have about 115 of these things cooking. We are not doing anything with nuclear waste. We fight over that, and we have the industry that is there. We can't ignore it. I think there is a new role for this group, since we are not licensing anything new, and haven't for years, to make it work and make it work in for the public health and safety. That is what I am committed to, and I know the chairman is, too, but I think there is some good, fertile ground for some activity here.

Thank you, Mr. Chairman.

Senator BREAUX. Thank you. I would like to thank the panel, then, Ms. Weiss. Thank you very much for being here. Your testimony has been helpfull.

We have one final panel which we will take. I would like to welcome up Mr. Alan Dean and Mr. Harold Seidman Mr. Dean is Chairman of the Academy's Standing Panel on Executive Organization and Management for the National Academy of Public Administration and Mr. Seidman, who is a member of that Administration.

Senator BREAUX. We welcome both of you witnesses. We had them before this person, I know, on the other side of the Capitol dealing with some other commissions and public administration. I appreciate your work, and if you can summarize your statements, we will proceed to questions.

Gentlemen.

STATEMENT OF ALAN L. DEAN, CHAIRMAN, STANDING PANEL ON EXECUTIVE ORGANIZATION AND MANAGEMENT, NATIONAL ACADEMY OF PUBLIC ADMINISTRATION, ACCOMPANIED BY HAROLD SEIDMAN

Mr. DEAN. Thank you, Mr. Chairman. I shall, as you suggest, in the interest of time, submit my statement for the record and will summarize some of the major points made.

I do wish to point out that I am the Chairman of the Standing Panel on Executive Organization and Management of the National Academy of Public Administration. I have been a Deputy Assistant Director of the Office of Management and Budget for Management. I didn't indicate in any statement, which is relevant, that I am a former Associate Administrator of FAA, and I was involved in the establishment of the NTSB and in aviation and transportation safety.

I am accompanied by Dr. Harold Seidman, who is a member of the Academy's Standing Panel, is a former Assistant Director for Management and Organization of the Bureau of the Budget and is

recognized in the country as the author of the leading book on the organization of government.

There are three major issues which have been repeatedly discussed in the hearings this morning. I will quickly treat the views that Dr. Seidman and I have on these three. First, we strongly support the creation of a single administrator or director to carry out the bulk of the functions now administered by the NRC.

It has been our experience in some 40 years of involvement in government organization that commissions rarely prove successful in the execution of government programs. That is particularly true in the areas of health and safety. It has already been pointed out that there is only one other commission in existence in the government today concerned with health and safety matters, and that is the Consumer Product Safety Commission. That commission has been strongly criticized in a recent GAO report. Two days ago, hearings were conducted on the possible reorganization of that Commission, including a bill to substitute a single administrator for the Commission.

It is often said that commissions bring with them certain advantages like diversity of views; they discourage precipitous or poorly conceived actions, that they somehow reduce vulnerability to political and interest group pressures. We can simply say that in the study of many commissions, we have found little evidence that any of these assertions are, in fact, borne out in the actual administration of a commission, but we do know that the disadvantages, usually attributed to such multiheaded bodies very often, if not usually, come to pass.

The report by Mitchell Rogovin has been referred to earlier in these hearings. He is a member of the National Academy of Public Administration, although he did not prepare his report in that capacity.

That report, in the clearest of language, argues urgently for the replacement of the commission by a single administrator. Mr. Rogovin did not think that any other reform short of that should suffice in coping fully with the conditions revealed in his report.

I do wish to note, however, a certain problem raised by provisions of certain bills before you, that is, the large number of Presidentially-appointed, Senate-confirmed assistant administrators. Even such a large and complex regulatory agency as the FAA has only an administrator and deputy administrator named by the President and confirmed by the Senate.

To introduce additional Presidential appointees encourages instability, makes it difficult to use senior career people on a sustained basis, and burdens the Senate and burdens the President. So we hope that if you do proceed, and we certainly hope you will, with a single administrator, you provide for only two Presidentially-appointed and Senate-confirmed positions.

Now, with respect to the Nuclear Energy Safety Board, it is going to be hard to set up the agency under a single administrator without an independent board on safety matters. We have always encountered that problem in transportation, and as you know, the ingenious device of the National Transportation Safety Board was adopted by the Congress when it approved the Transportation Department Act.

The very sound reasoning was that an FAA Administrator cannot investigate himself in a major accident. This was proved in the nuclear regulatory area by Three Mile Island, where two separate external commissions were appointed to study that accident.

In the transportation area when a serious incident occurs, a going organization with trained investigators is on the scene minutes or at most hours after the incident. They bring to bear on the experience of years of investigation.

We think that such a body in the nuclear area makes sense if certain precautions are followed, and one has been stressed here by a number of witnesses: Do not give it functions beyond those now in the NTSB in transportation accidents namely, investigating accidents, making findings of probable cause, and giving advice on conditions coming out of these investigations which might enhance safety. Keep them out of standards development; keep them out of the issuance of regulation; do not let them become the managers of the nuclear regulatory agency.

But our experience in the transportation area, in spite of many misgivings on the part of the FAA in early years, is that the arrangement has, on a whole, worked well, and we, therefore, think that it should be adopted as a part of the total package of NRC reorganization.

Now, turning to the Office of the Inspector General, this would be one of the first instances of applying the Inspector General concept to a relatively small agency. It now applies to most of the executive departments and most of the large independent agencies.

We worry somewhat that with the other reforms before you, the adding of the Inspector General at this time might unnecessarily complicate the task of reform, and we don't see what immediate purpose it would serve.

A single administrator would have, as among his central functions, assuring effective internal audit and investigative functions. That is the way it is done in the FAA and in most other safety agencies today.

I am not saying that for all time or in all forms that the Inspector General may not serve a purpose. But we only know of one small agency where it has been tried, and that was Synfuel. Let me tell you, it was not a great success.

We, therefore, urge that you concentrate on the single administrator and the safety board as a workable package which will make an enormous contribution, Mr. Chairman, to the quality of administration in the vital nuclear energy field.

I wish to compliment the Chairman and the Committee for these excellent hearings and the fine preparations that have gone into them.

Senator BREAUX. Thank you very much for your very professional recommendations.

Just a couple of questions. If we provide an Inspector General, I think you heard my previous comments that it would investigate the internal operations of the Commission members and the staff with regard to making sure that they are doing their job honesly. Should they also be charged with investigating the operations of the licensees that are the plants that are to be regulated?

My concern is that it seems to be something that the NRC should be doing. If we take everything out of the NRC and we have everything independent, we are not going to have the NRC doing anything. You will have an independent safety board, outside inspector, independent inspector outside their parameter. Before you know it, we will have everything outside the NRC.

Mr. DEAN. Dr. Seidman wishes to supplement what I am going to say, but I agree completely that the Inspector General, if such a measure were adopted, should be strictly internal in his orientation. But let me suggest, Mr. Chairman, if the bill you report does not provide for an Inspector General, the danger of these kinds of functions being attached will be greatly reduced.

Dr. Seidman.

Dr. SEIDMAN. I have some concern about the proliferation of Inspectors General and really dividing responsibility within an agency, of maintaining honesty and integrity. I would think that is one of the first duties of an administrative agency, to be held accountable for that. I don't like to see a situation in which The administrator can say, "Well, that's not my responsibility; that's the Inspector General's job to assure there is honesty and integrity and efficiency in what we do," and to pass the buck to the Inspector General.

That is one danger. As we divide these functions in attempting to solve particular problems and create new institutions to do it, we are making the problem of maintaining accountability more difficult. I think the administrators should have their feet held to the fire rather than creating new institutions, particularly in the case of small institutions, such as the Nuclear Regulatory Commission.

Senator BREAUX. Let me ask one other question with regard to the nuclear energy safety board. You recommend the establishment of such a board. What happens to their existing ACRS operation that they now have internally?

Mr. DEAN. The experience in the transportation agencies is that the agency itself never gives up an internal capability to inspect, to investigate, and to constantly examine the conditions and use of the safety operation. The sole purpose of the board is in significant incidents, where important questions of public confidence arise, to provide a group of people not previously involved in the process but who are skilled in investigation to examine and publicly disclose the conditions that led to that incident; to propose, but only propose, actions which they feel would be beneficial in the future in discouraging repetition of the accident.

Senator BREAUX. Can we and how would we establish a system that establishes some sort of a threshold for the involvement of the safety board? I take it with regard to transportation matters and the National Transportation Safety Board, if an airplane crashes, NTSB comes into play and investigates that real disaster.

But the day-to-day safety inspections, small violations which are subject to fines that are required is not done by the NTSB; it is done by FAA. Can something like that be provided or established for the nuclear industry?

Mr. DEAN. You are absolutely correct, Mr. Chairman.

In the transportation area, there are literally thousands of accidents, including fatal accidents, every year. The NTSB, however,

has, not by law, but through its own discretion, the decision as to when it will investigate. Now, obviously, every major air carrier accident is investigated. But the small Cessna whose untrained pilot without an instrument rating tried to fly through some clouds and ends up somewhat poorly, that is not investigated in normal circumstances because the NTSB would see no purpose.

On the other hand, the FAA would look at it very carefully in terms of training, inspection, what they are going to tell the general aviation community, et cetera.

Senator BREAUX. How is that threshold established? Is it done by NTSB; by FAA?

Mr. DEAN. It is set by the NTSB. Otherwise, the FAA, in effect, can rule out areas that should be subject to NTSB review. That would not be aceeptable.

Senator BREAUX. I appreciate you gentlemen being with us. I think you have been very helpful. As always, we appreciate your very professional viewpoints on these matters. We thank you for being here.

Mr. DEAN. My pleasure, Mr. Chairman.

Senator BREAUX. This panel is concluded. This concludes all of our witnesses. We have tentatively scheduled a mark-up, for next week. I think because of pressing business, it is going to be very difficult to make that target date, and the Committee will be announcing when we intend to have a mark-up session for pending legislation.

With that, the Committee will stand adjourned until further call of the Chair.

[Whereupon, at 12:08 p.m., the subcommittee was recessed, subject to the call of the Chair.]

[Statements submitted for the record and the legislative proposals follow:]

PREPARED TESTIMONY
SUBMITTED BY
UNITED STATES NUCLEAR REGULATORY COMMISSION

TO

SUBCOMMITTEE ON NUCLEAR REGULATION
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

CONCERNING

PROPOSED SINGLE ADMINISTRATOR, NUCLEAR SAFETY BOARD AND INSPECTOR GENERAL LEGISLATION

PRESENTED BY

LANDO W. ZECH, JR.
CHAIRMAN

SUBMITTED: OCTOBER 29, 1987

Mr. Chairman, Members of the Subcommittee, my fellow Commissioners and I are pleased to appear before you today to discuss several bills before you which individually or collectively would restructure the Nuclear Regulatory Commission through the creation of a regulatory agency headed by a single administrator, and establishment of a Nuclear Safety Board and Inspector General. The bills are: (1) S.1770, the "Nuclear Regulation Reorganization Act of 1987"; (2) H.R. 3285, the "Nuclear Energy Reorganization Act of 1987"; (3) S.14, the "Independent Nuclear Safety Board Act of 1987"; (4) S.1769, which would establish an Inspector General (5) S.100, the "Improved Nuclear Standards Act" and (6) S.908, the "Inspector General Act Amendments of 1987." Before addressing these specific bills, I will set forth the Commission's position on restructuring the NRC.

With respect to whether the NRC should be restructured as an independent agency headed by a single administrator, a majority of the Commission supports the single administrator concept.

In recent years there have been three independent examinations of the structure of the Commission. Following the Three Mile Island Accident, both the Kemeny Commission and the Rogovin Special Inquiry Group recommended in 1979 that the NRC be headed by a single administrator. In a strongly worded statement, the Kemeny Commission declared that "as presently constituted, the NRC does not possess the organization and management capabilities necessary for the effective pursuit of safety goals." The Rogovin Inquiry Group concluded that "the central and overwhelming need is for legislative and executive reorganization to establish a single chief executive with the clear authority to supervise and direct the entire NRC staff." In response to these

recommendations, the President prepared and the Congress did not object to Reorganization Plan No. 1 of 1980. That Plan vests additional executive authority in the Chairman. Subsequently, the Grace Commission recommended that Congress enact legislation which would further strengthen the authority of the Chairman as the chief executive officer of the agency. However, no legislation was passed to implement the Grace Commission recommendations.

In large part the central focus of the discussion on the structure of the NRC is whether the public is better served by an organization where important decisions are made through a collegial process or by an agency headed by a single decision-maker. In addressing this issue the Rogovin Inquiry Group stated, "there is not an agency in government that would not better provide for a diversity of views if it were headed by a Commission. It is not likely, however, that any of these agencies would be as well managed."

In 1954 when Congress enacted the Atomic Energy Act, one of the primary mandates of the Atomic Energy Commission was to regulate the development of the commercial uses of nuclear power which were then in their infancy. A collegial body was a sound structure to formulate licensing procedures and resolve the many different licensing and policy issues arising from the development of this highly complex new technology. In the ensuing 33 years much has changed. More than one hundred commercial nuclear power plants have been licensed to operate. As a result, the workload of the NRC has shifted from evaluation of construction permit and operating license applications to the regulation of a maturing operational industry. In carrying out this role, it is the

Commission's view that efficient management of this major regulatory task is increasingly important to maximize the effectiveness of NRC's resources. A Commission type organization does lead to a diversity of technical and professional opinion. For those who might think that a single administrator would lack the diversity of opinion brought by the Commission form, they need only recognize that our professional staff is capable of providing a broad diversity of technical and professional judgment which might be pertinent to safety decisions. Additionally, our rulemaking and adjudicatory proceedings assure that a single administrator would be amply exposed to a wide range of views on all significant issues.

A majority of the Commission believes that a single administrator should result in increased responsibility and accountability at the top of the agency, which it believes important to meet this agency's statutory mandate for protection of public health and safety.

Turning now to Nuclear Safety Board proposals, the Commission does not object to the establishment of a group which would assess the safety of NRC licensed facilities and conduct investigations of significant safety events at those facilities if legislation is enacted creating a single administrator. However, a majority of the Commission strongly advocates that such a Board, which would perform many of the functions now performed by the Commission's Office for Analysis and Evaluation of Operational Data, should become part of the single administrator nuclear regulatory agency, rather than a separate federal agency.

If a Nuclear Safety Board is chartered as a separate federal agency this would result in an unnecessary duplication of functions. For example, the NRC would still require sufficient staff support to determine what happened and what actions should be taken after an accident. NRC could not be expected to rely completely on another federal agency in order to make its public health and safety determinations.

An independent nuclear safety board has the potential to complicate rather than simplify nuclear regulation by further diffusing accountability and responsibility for the execution of the agency's mission. Some argue that a Nuclear Safety Board needs to be a separate federal agency in order to increase confidence in nuclear incident investigations by relieving the nuclear regulatory agency of the responsibility to investigate and determine the cause of events to which the regulatory agency's activities might have been contributing factors. However, a majority of the Commission believes that the Nuclear Safety Board could be given sufficient independence within the regulatory agency to mitigate these concerns. In sum, the benefits of having the Nuclear Safety Board as part of the regulatory agency outweigh the benefits to be gained by giving it total independence.

The Commission does not quarrel over the basic concept of an Inspector General. The need for an independent and objective internal investigative and audit unit within the NRC was recognized at NRC's inception in 1975. Hence, the Commission established OIA to perform that function. The Commission believes that OIA as currently structured affords the best mechanism for accomplishing these tasks.

The Commission would not object to the creation of such a statutory Inspector General office in an agency headed by a single administrator. The Inspector General's functions should be limited to those currently performed by the NRC's Office of Inspector and Auditor. For reasons specified in the Commission's October 8, 1987 testimony before this Subcommittee, the Commission unanimously believes that the regulatory support functions now performed by our Office of Investigations should not become part of an Inspector General's office.

With these general principles in mind, I turn now to the specific bills on which you have sought our view.

1. S.1770 -- Single Administrator Legislation

This bill would replace the NRC with an independent regulatory agency headed by a single Director. The Director, the Deputy Director, and three Assistant Directors would be nominated by the President, confirmed by the Senate, and thereafter serve at the pleasure of the President. A majority of the Commission supports the single administrator concept embodied in the bill. The Commissioners have varying views on how the Agency should be structured.

2. S.14 -- Nuclear Safety Board Legislation

S.14 would establish an independent Nuclear Safety Board. The Commission opposes enactment of this bill, unless legislation creating a regulatory agency

headed by a single administrator is enacted. Additionally, a majority of the Commission believes the Safety Board should be made part of the new single administrator agency.

3. S.1769 , S.908, S.100 -- Inspector General Legislation

As previously stated, the Commission would not object to the creation of such a statutory Inspector General office in an agency headed by a single administrator. The Inspector General's functions should be limited to those currently performed by the NRC's Office of Inspector and Auditor. For reasons specified in the Commission's October 8, 1987 testimony before this Subcommittee, the Commission unanimously believes that the regulatory support functions now performed by our Office of Investigations should not become part of an Inspector General's office.

Under S.1769 an Inspector General would be established to carry out the functions now performed by our Office of Inspector and Auditor. The Commission would not oppose this bill if single administrator legislation is enacted.

S.908 provides that the Inspector General would be assigned the functions now performed by the Commission's Office of Inspector and Auditor (internal audits and investigations of NRC employees and contractors) and our Office of Investigations (investigations of licensees and their contractors). The Commission unanimously believes that the functions performed by our Office of Investigations should not be assigned to an Inspector General.

S.100 takes a different approach. The Inspector General would undertake the internal audit and investigation functions now performed by OIA. In addition, it would review all nuclear safety procedures of the Commission to ensure that the best available nuclear safety standards are used, propose safety regulations to the Commission, and prepare an annual report to Congress on nuclear safety.

The Commission unanimously believes that an Inspector General's charter should not extend to making safety evaluations and recommendations; that is the function of the NRC regulatory staff. Finally, we note that Inspector General's traditionally have not been assigned substantive regulatory functions.

4. H.R. 3285 -- Single Administrator, Nuclear Safety Board and Inspector General Legislation

The Commission majority supports the concept of comprehensive legislation that includes a single administrator. The Commission would not oppose a Nuclear Safety Board and an Inspector General if such legislation were enacted. We would suggest that significant changes be made to H.R. 3285.

The Nuclear Safety Board provisions should be substantially modified so that the Board is made part of the Nuclear Energy Regulatory Agency. The scope of the Nuclear Safety Board's duties should be narrowed so that it would not have jurisdiction over Department of Energy owned nuclear facilities. The Commission unanimously believes that the jurisdiction of the Nuclear Energy Regulatory Agency should be generally limited to the regulation of the

commercial nuclear industry and that the agency should not be required to concern itself on a routine basis with matters relating to the operation of Department of Energy owned facilities.

Mr. Chairman, that concludes our testimony summarizing our position on these bills. I understand that my fellow Commissioners have separate statements.

UNION OF
CONCERNED
SCIENTISTS 1616 P Street, NW S.310 · Washington, DC 20036 · (202) 332-0900

UNITED STATES OF AMERICA

Senate Committee on Environment and Public Works
Subcommittee on Nuclear Regulation

Testimony of

Ellyn R. Weiss
General Counsel
Union of Concerned Scientists

October 29, 1987

Thank you for the invitation to appear today to discuss a variety of measures proposed to change the structure of the Nuclear Regulatory Commission (including S. 14 to establish an nuclear safety board, S. 1769 to convert the NRC to an agency headed by a single administrator, and S. 1770 to establish an independent Inspector General at the NRC) as well as to present our views on other measures to increase protection of public health and safety.

The Union of Concerned Scientists applauds the efforts by the chairman and members of this committee to address serious structural deficiencies at the NRC. Before addressing the possible remedies to these deficiencies, I'd like to discuss how the Union of Concerned Scientists views the general state of nuclear safety regulation in 1987.

The NRC, as the body responsible for identifying and promoting safety improvements in the nation's nuclear plants, is at a low ebb. In our view, it is unable or unwilling to ensure that the high standards required of the industry it regulates are met. Instead, the public must rely on one inspector's remarkable tenacity in the face of his superiors' intimidation to bring to light a pervasive breakdown in quality assurance at Comanche Peak. We have to rely on a reporter for the Cleveland Plain Dealer to find out that General Electric believed the containments it sold to 39 U.S. nuclear plants had major safety flaws. We have to rely on an inspector stumbling across an internal NRC memo in Middle South Utilities' files to find out how closely one NRC commissioner really does communicate with licensees.

The NRC commissioners frequently appear before Congress proclaiming that safety is their greatest concern and that their brand of regulation is working. But looking beyond the words, let's look at how seriously safety is taken at the NRC.

The NRC's review of the problematic Babcock & Wilcox reactors provides an excellent, ongoing case study of the agency's casual attitude toward safety. Here is a reactor whose design is particularly sensitive to failures that would be innocuous in other pressurized water reactors. By the Executive Director for Operations' own admission, despite modifications made to B&W plants in the wake of the TMI-2 accident, "the number and complexity of events has not decreased as expected."

As the result of accidents at two Babcock and Wilcox plants in 1985 (Davis-Besse in Ohio and Rancho Seco in California), the NRC stated in January, 1986 that reassessments were needed of both the overall safety of the plants and of the adequacy of NRC's basic design requirements. At the same time it said that the plants were safe enough to operate during the "interim." NRC

was to have completed its reassessments by the end of 1986. Instead, the reassessment responsibility was turned over to the Babcock and Wilcox Owners Group, which focused the review more on improving economic performance than on plant safety.

By July, 1987, the Owners Group had issued 178 recommendations, including 73 "key" recommendations. The vast majority of these recommendations have not been implemented, and according to the utilities' schedules, it will be years before many of them will be implemented, if ever. In the case of Rancho Seco, whose December 1985 accident helped provoke the B&W reassessment in the first place, the owner of the still shut down plant has decided to postpone implementation of 23 of the "key" recommendations until after the plant has restarted! Among the recommendations that will therefore not be implemented at Rancho Seco until sometime after operation resumes are:

- Determine whether motor-operated valves in safety systems are correct size.

- Review maintenance procedures to ensure that motor-operated valves in safety systems are capable of performing as required during an accident.

- Evaluate the compressed air systems to ensure that air system failures will not prevent adequate cooling of the core.

During this whole review period, the NRC has played the role of a philosophical observer sitting on the sidelines. The agency has made some recommendations and suggestions, but has never mounted an aggressive investigation aimed at quick resolution of the issues and has never even hinted at what sort of rulemaking might be required to remedy the design problems. The NRC has never articulated a reasoned basis to believe that these plants

are safe enough to keep running in the face of a decision that a fundamental safety review is needed. Finally, why does the agency initiate a review and then passively allow licensees to decide to forgo implementing "key" recommendations for years?

NRC's attitude toward safety is further illustrated by its attempts to promulgate a backfit rule which would allow the agency to consider cost in determining what safety upgrades will be required on nuclear plants. Under the Atomic Energy Act, the NRC may only consider cost when making determinations on whether to adopt backfits that go beyond what is required to provide adequate protection of the public health and safety. In vacating the NRC's rule, the U.S. Court of Appeals for the District of Columbia stated, "In our view, the backfitting rule is an exemplar of ambiguity and vagueness; indeed, we suspect that the commission designed the rule to achieve this very result." Since the court's decision in August, the NRC has proposed a new backfit rule which has precisely the same infirmities the court ruled against the first time around.

One of the agency's most striking deficiencies is its failure to promulgate guidelines for determining when a plant's safety violations are so serious that it should be shut down. The NRC is an agency that has the authority to order shut-downs when safety problems pose an undue risk to the public, but as the August 1987 GAO Report released by Senator D'Amato states, "NRC lacks guidelines to determine when to shut a plant down." The report also states that despite thousands of safety violations each year, "NRC headquarters does not consolidate the information to evaluate safety trends and/or determine the status of corrective actions taken by the utilities."

Another problem area is the lack of avenues for public participation in proceedings which determine how protected the public is to be. The public now has a statutory right to

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participate in adjudicatory hearings prior to licensing whereas no such meaningful opportunity exists after the license has been granted. This is important because there are numerous instances after licensing where safety hazards are discovered either through research or operating experience. Currently, utilities may claim a hearing to challenge the necessity for any safety improvement, whereas the public is prohibited from questioning the sufficiency of the improvements.

I have only mentioned a few chronic problem areas needing reform, but there are many more. If these conditions are permitted to persist at the NRC, then the Congress cannot assure the American people that U.S. nuclear power plants are operating safely.

How can the deficiencies be remedied? According to the Kemeny Commission's investigation report on the TMI-2 accident:

> To prevent nuclear accidents as serious as Three MIle Island, fundamental changes will be necessary in the organization, procedures and practices -- and above all -- in the attitudes of the Nuclear Regulatory Commission and, to the extent that the institutions we investigated are typical, of the nuclear industry.

No reorganization or legislative direction can, by itself, instill the proper attitude of an arms-length regulator. We are convinced that there is no magic bullet -- no special statutory language or simple management reorganization -- that will ensure that the NRC treats protecting the public safety as its overriding obligation. We believe that the best hope for enhancing safety lies in creating a better system of checks and balances, improving public participation, and increasing Congressional vigilance of NRC's rulemaking, standard-setting and general operations.

Certainly part of the problem is institutional, as the various NRC reform proposals now before this committee recognize. The NRC staff put its official stamp of approval on each currently licensed plant and is responsible for reviewing those still in the pipeline. To concede that a safety problem was overlooked at any plant raises questions about the safety of other plants and about the quality of the agency's own judgment. This is a powerful disincentive to early and open airing of safety issues.

Therefore, independent checks and balances are needed to provide a counterweight to this institutional dynamic. The independent Nuclear Safety Board and the Inspector General, if properly set up, help provide that counterweight.

We have stated in the past that the idea of converting the NRC to a single administrator agency is misguided. We still question its value and are concerned that it could seriously erode public access to the agency's decision-making, take the public's business behind closed doors, and increase the already unhealthy dominance of the agency's agenda by the regulated industry. At a time when we are increasingly forced to rely on whistleblowers and Freedom of Information Act requests to get at the truth, converting the NRC to a single administrator agency could remove what little sunshine we are currently afforded by the commission system.

Yet we have also come to realize that the commission system is no panacea either. We agree with Senator Simpson in his remarks introducing S. 1770 that the current approach "has resulted in the lack of any real responsibility to be vested in a single member to carry out a decision, and a corresponding lack of any real accountability by any single individual for the decisions that are made -- or not made."

We support legislation to create an independent Nuclear Safety Board, similar to the National Transportation Safety Board, to investigate nuclear accidents and near-misses and to make recommendations to the NRC for the steps necessary to address their root causes and prevent recurrence. The NRC is institutionally ill-suited to conduct and follow-up investigations because of the inherent conflict of interest involved when the agency investigates its own conduct. This conflict is presented in virtually every case, since NRC's conduct is implicitly or explicitly in question whenever an accident occurs. For example, the Kemeny Commission found that the agency's failures were at least as significant a contributor to the TMI accident as any other cause. This has continued to be the pattern in subsequent investigations.

UCS supports the concept of the safety board contained in Senator Biden's S.14, which envisions such a board not only responding to accidents, but also reviewing regulatory and licensing procedures with an eye toward promoting safety and thus helping avoid accidents. Particularly appealing to us is Sec. 307 of Representative Morris Udall's H.R. 3285, which states that whenever the board submits a recommendation regarding nuclear safety to the commission (or the single administrator), the commission (or administrator) shall provide a written response to each recommendation within 90 days. The response must indicate whether the recommendation will be acted on in whole or in part, and what the timetable will be for implementing the recommendation. In the event the commission (or administrator) does not intend to adopt the recommendation in its entirety, a detailed explanation of the reasons for this decision must be submitted to the board. We believe this provision will help force the NRC out of its policy of stonewalling and intentional obfuscation, and will thus do more in the long run to improve safety than will a single administrator.

We believe an Inspector General at the NRC is long past due. We applaud the efforts by Senators Glenn and Simpson to establish an IG. In order to ensure that an IG office is able to effectively carry out its mission and respond to the kinds of problems exposed by this and other committees, Congress should specify that the IG must not be prevented or prohibited by the commissioners from initiating, carrying out, or completing any audit or investigation or from issuing any subpoena during the course of any audit or investigation.

One of the differences between the Glenn and Simpson bills is how the Office of Investigations (OI) is treated. In Senator Glenn's bill, the office of the IG contains the OI, while Senator Simpson's bill is silent on the subject. We believe that Congress must legislatively address the problems that the OI has been experiencing, as brought to light in hearings before this committee and the Government Affairs Committee. The commission has gone to elaborate lengths to intervene in OI investigations:

- The commission has several times considered plans to have OI report to the EDO.

- In 1986 the commission established "threshold" limitations for NRC staff referrals to OI. That is, the staff were given authority to determine the regulatory need for an OI investigation.

- Commissioner Roberts has indicated that he favors repealing the authority of OI to initiate an investigation without the concurrence of either the commission or its regulatory staff.

- The EDO proposed and the commission agreed to establish the Investigation Referral Board to function as a screening board for staff referrals to OI.

Fortunately, this Board has been disbanded.

- o The commission has now established a board to set investigation priorities for OI. This board presumably has the authority to demote high priority investigations, particularly when those investigations might interfere with the commission's granting an operating license.

Without Congressional intervention, these unceasing attempts to confine, filter, and delay investigations will continue to hamper the OI's effectiveness. We believe Congress should confirm that OI is the NRC's primary investigator of external wrongdoing. Legislation providing a statutory authority for OI should codify its current authorities and responsibilities and should explicitly provide OI with adequate subpoena authority, the right to self-initiate cases, and the right to refer cases directly to the Department of Justice. Finally, the director of OI must be able to appoint and supervise employees of the office. That is, the EDO and commissioners must not be able to transfer staff to the OI without the director's approval.

In addition to moving on the NRC structural reform bills, additional Congressional activity is necessary to strengthen public protection. The Energy Reorganization Act should be amended so that not only is NRC required to report on unresolved safety issues but to resolve them. Also, given the GAO's finding that NRC lacks guidelines for determining when safety violations warrant shutting down a plant, Congress should require the promulgation of such guidelines and direct that NRC follow them.

In conclusion, the establishment of a single administrator agency in the place of the commission, while streamlining operations and focusing responsibility, would not even if combined with a Nuclear Safety Board, fix the fundamental

problems of the agency -- a lack of will to resolve safety problems and aggressively enforce regulatory standards. It will not make the agency more receptive and responsive to public participation. And it will do nothing to remedy the agency's regulatory shortcomings as identified in the September GAO report. If Congress is dissatisfied with the job the NRC is doing, the answer must go well beyond structural changes. Congress must vigorously oppose the NRC's attempts to weaken public safety and restrict public access. It must insist on reasoned, objective guidelines for determining when safety improvements are needed and when operating plants pose undue risk to public safety.

We believe there is no quick fix for the NRC. We support the establishment of the independent IG, the independent OI, and the safety board, and we recognize some of the benefits that could be gained from a single administrator. But these can only be considered the first step toward getting the NRC and the industry to meet higher standards. We hope this committee's efforts on structural reform expand to a review of the guidelines, standards, and regulations which the agency uses to circumvent its public safety mission.

Respectfully submitted,

Ellyn R. Weiss
General Counsel

UNION OF CONCERNED SCIENTISTS

STATEMENT OF DR. E. LINN DRAPER, JR.

CHAIRMAN, PRESIDENT, AND CHIEF EXECUTIVE OFFICER

GULF STATES UTILITIES COMPANY

BEFORE THE

UNITED STATES SENATE

SUBCOMMITTEE ON NUCLEAR REGULATION

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

LEGISLATIVE REORGANIZATION PROPOSALS FOR

NUCLEAR REGULATORY COMMISSION

October 29, 1967

Mr. Chairman and members of the Subcommittee, I would like to thank you for the opportunity to appear before you today to discuss reorganization of the U.S. Nuclear Regulatory Commission and comment on a number of bills before the Subcommittee. I am currently the Chairman, President, and Chief Executive Officer of Gulf States Utilities and have been with the company since 1979. Before 1979, I was Director of the Nuclear Engineering Program at the University of Texas for about ten years. I have also served as president of the American Nuclear Society, and have served as a consultant to over thirty nuclear utility companies, several federal and state agencies, and a number of industrial concerns. My testimony today is presented on behalf of the American Nuclear Energy Council (ANEC), the Edison Electric Institute (EEI), and the Nuclear Management and Resources Council (NUMARC).

Introduction

In your letter of invitation, Mr. Chairman, you invited the views of the nuclear energy industry on four pending legislative proposals to change the organization of the NRC or its offices. The Subcommittee's focus is on whether NRC's current structure permits it to discharge its responsibility most effectively and efficiently.

It is appropriate and timely for this Subcommittee to take a hard look at the organizational structure of the NRC and related aspects of the underlying nuclear regulatory program. The NRC,

in its present form, has been managing the nuclear regulatory program for a dozen years; the regulatory program itself is now some thirty years old; and both the regulatory program and the agency are confronted by serious challenges -- a number of which are summarized in Senator Simpson's statement introducing S. 1769 and S. 1770.

We understand, therefore, the desire to consider whether organizational or other program reforms are needed and, if so, whether they will bring about worthwhile improvements -- ones that will advance nuclear safety and further the program as a whole. We welcome the opportunity to contribute our views.

As background to our specific comments on the legislative measures before the Subcommittee, I want to underscore certain principles that shape the nuclear industry's position. Foremost among them is the need to assure that any change to the NRC structure is compatible with safety interests. Coupled with this, is the clear recognition that, if we are to have a viable nuclear power program, we must assure that there is an effective, credible nuclear regulator. The nuclear industry's broad-based efforts to upgrade performance through self-improvement and to aggressively pursue industry-wide operational excellence -- described in your October 20 hearings by representatives of the Nuclear Management and Resources Council and the Institute of Nuclear Power Operations -- are not intended to supplant regulation but to complement it and thereby advance the safety

goals which both NRC and the nuclear energy industry share.

In keeping with those basic precepts, we urge that, in considering organizational changes -

- Change to NRC's management or office structure should not simply be reactive to problems of the moment. Any changes should be legislated only after thorough consideration of the operational consequences for the agency and for the regulatory program.

- There should be no piecemeal approach to organizational change. Proposals addressed to individual NRC offices or functions should be considered in the context of the best overall structure for the agency.

- NRC should not be "cannabilized". Change should not disperse or dissipate the agency's regulatory resources.

- Change should not result in duplication of NRC's regulatory functions.

- And change should not produce confusion of regulatory authority. NRC, or any successor agency, must be maintained as the sole body responsible for safety regulation of nuclear power activities.

Moreover, many of the NRC problems for which organizational change has been proposed as the appropriate response have been produced by a licensing and regulatory process that long ago ceased to match technological capabilities, safety aims, and national needs. That process should be reformed at the same time Congress tackles organizational change. The needed reforms are well-known and widely-endorsed: standardization; pre-approval of nuclear plant designs and sites; and consolidated construction permit and operating license.

Proposed Organizational Changes

Change From a Commission to a Single Administrator

The most far-reaching of the legislative proposals before the Subcommittee is S. 1770, the Nuclear Regulation Reorganization Act of 1987. This bill would replace commission management of the NRC with that of a single administrator.

While the full burden of NRC's operational problems cannot be attributed to its management structure, there is no avoiding the fact that the agency has been repeatedly frustrated by the evident limitations which that structure imposes. Senator Simpson's statement introducing S. 1770 forcefully depicts that frustration and the underlying organizational shortcomings. He also portrays the present Commissioners as we would -- hardworking, professional public servants struggling to perform

their task in a structural straitjacket.

Thus, we have also come to conclude that organizational change is needed and that the single administrator is a viable and potential improvement that merits thorough and careful consideration. We must emphasize that any fundamental alteration to the nuclear regulatory agency should be coupled with thorough reform of the licensing process.

We have looked long and hard at the question of the most appropriate NRC management structure, In 1984 and 1985, a series of three reports were prepared for the Edison Electric Institute by Marcus A. Rowden, a former Chairman of the Nuclear Regulatory Commission. The first report examined the history of the NRC structure and the resulting managerial problems; the second report scrutinized the arguments supporting and opposing a commission structure for the NRC and the major management alternatives; and the third report analyzed the issues raised by any change from a commission form of management to one of a single administrator. These reports, in our view, constitute valuable background material in considering the issues presented by S. 1770. They have been combined into a single volume, entitled Report on the Management Structure of the Nuclear Regulatory Commission Prepared for the Edison Electric Institute, and with your permission Mr. Chairman, I would like to submit that report for the record of this hearing.

While this report does not specifically recommend a preferred regulatory organization structure, it does conclude that a single administrator structure offers a number of features conducive to achieving greater effectiveness in regulatory operations. It also takes a hard look at the criticisms leveled at such an organizational structure.

Advantages of a Single Administrator

The single administrator form of regulatory management offers several distinct advantages over a commission structure.

(1) Improved Management. Replacing the five-member Commission with a single administrator, most observers agree, would significantly improve the agency's management. A single administrator, who alone would possess full responsibility and authority for agency operation, would be able to manage the agency more effectively and take decisions on a more timely basis than a commission in which authority and responsibility are diffused. This was the conclusion of the post-TMI Kemeny and Rogovin studies, both of which recommended scrapping the commission format at NRC for that of a single administrator. The evolving demands on NRC resources also reinforce the need for improved management, since timely decision-making is essential for a commission that is focused on regulating the safe operation of nuclear power plants instead of licensing new plants.

(2) Improved and More Timely Policy Formulation. A further major criticism made by post-TMI studies, including one conducted by the GAO, was that the Commissioners failed to effectively control regulatory policymaking. Faced with the inter-personal and institutional obstacles inherent in arriving at consensus positions -- including Sunshine Act restrictions -- the Commission in too many cases confronts the dilemma of either having inordinate delays or letting policymaking fall by default to action by the regulatory staff on a case-by-case basis.

(3) Clear Accountability. A third major deficiency of the current NRC structure -- and, from a public policy standpoint, perhaps its most disturbing one -- is that, by diffusing responsibility it diffuses accountability. As contrasted to the current collegial situation, where no one individual is in charge, a single administrator -- and the President who appoints that official -- would be fixed with unmistakable accountability for agency performance. And in government as well as in business, experience tell us that accountability is a powerful motivator and safeguard.

Opposing Arguments

Several major concerns have been expressed about single administrator management for the NRC and we think them worth examining.

(1) Loss of Diversity. A major argument advanced for the commission structure is that it provides for diversity in decision and policymaking. Proponents contend that the controversial nature of nuclear issues warrants a collegial body to reflect differing viewpoints. But as Senator Simpson points up, "the value of bringing diverse views to bear, in a collegial context, on the licensing and regulatory issues facing the Commission, has all but been hopelessly lost." That judgment is supported by the stated experience of both present and past Commission members -- individuals whose service spans virtually the entire lifetime of NRC. Moreover, as the post-TMI Rogovin report declares:

> "The desire for 'diversity' in part mistakes what we believe to be the proper roles for the regulatory agency, the Executive and Congress in our nuclear safety programs. We do not believe the proper function of the Commission or administrator should be to consider and resolve competing public attitudes about nuclear power in every individual safety decision that is made. It is precisely this hidden pressure that has played an important role in paralyzing the Commission in the past few years. Decisions about the ultimate safety objective in the regulatory program, and about the expansion or reduction of our country's reliance on nuclear power -- decisions which inevitably involve a balancing of the risks against the benefits of this

technology -- should ultimately be made by the Executive and the Congress, as part of the Nation's overall strategic energy policy."

(2) Public Visibility. It has also been argued that a single administrator would reduce the public visibility of the policymaking process. A single administrator, clearly, would not be subject to the strictures of the Sunshine Act. We hardly think this decisive, however, in terms of the openness of the regulatory process. NRC rulemaking would continue to be conducted under the public notice and comment procedures mandated by the Administrative Procedure Act. Moreover, the licensing and regulatory process, as a whole, would still be as open as it is today to public scrutiny. Licensing issues would continue to be aired in public hearings; technical issues would continue to be ventilated in public meetings of the agency and of its Advisory Committee on Reactor Safeguards; the agency's practice of making virtually all of its papers publicly available would still continue; and, of course, the Freedom of Information Act would continue to apply. We would fully expect, furthermore, that Congressional oversight would continue to be vigorous and ongoing. In short, the nuclear regulatory process would remain the most open and visible process pursuant to which the government's business is conducted.

(3) Regulatory Program Stability. There is a third major concern about a single administrator structure -- the resulting

potential for instability in the regulatory program since agency management and policies would be subject to change with each new administration. The concern should be tempered, however, by a recongnition of the practical constraints on radical change. Those constraints are inherent in the Presidential appointment and Senate confirmation process, in the massive regulatory infrastructure which (experience shows) changes slowly when at all, and in the continuity of the professional staff that conducts the agency's day-to-day business. Moreover, we know full well that stability is not a necessary corollary of collegial regulatory management. Nonetheless, we take seriously the underlying basis for this concern and ask the Congress to give it careful consideration in examining the consequences of such an orgainzational change.

It is because of the foregoing concern that some have advocated an organizational restructuring which would maintain the commission format for NRC but augment the Chairman's role and powers within such a structure. This so-called "strong chairman" approach would leave the Commission in place for policymaking and adjudication purposes but would make the Chairman a true Chief Executive Officer as respects management functions -- according that official greater authority over staff appointments and the ordering of the agency's business. This alternative, as well, is explored in the earlier-referenced EEI report. Whether the NRC structure is reorganized to create a single administrator or a strong chairman, the result should be to focus responsibility and

accountability in the chief executive officer of the agency.

Proposals for Other Organizational Changes

The Subcommittee has before it proposals for other organizational changes to NRC, either independent of or in conjunction with the creation of a single administrator structure: the bill introduced by Senator Simpson which would amend the Inspector General Act of 1978 to create an independent Inspector General for the nuclear regulatory agency (S. 1769); a measure reported out by the Senate Committee on Governmental Affairs which would also create an independent Inspector General for the NRC but would additionally transfer to such an Inspector General the functions currently performed within the NRC by its Office of Investigations (S. 908); a further measure sponsored by Senator D'Amato that would establish an independent Inspector General for NRC having safety-related functions as well as those prescribed by the Inspector General Act of 1978 (S. 100); and finally, a measure that would create a three-member Nuclear Safety Board, independent of the NRC, with responsibility for performing specified accident investigation and other regulatory-related functions (S. 14).

As a guiding bedrock principle, we strongly believe that responsibility for nuclear power safety regulation should reside in a single regulatory body -- one which possesses the authority, resources and expertise to discharge its safety mandate and is

accountable to the political branches of government for the exercise of that mandate. Establishing other agencies or functionaries with independent, cross-cutting or overlapping regulatory missions is a prescription for divided authority, contention, confusion in safety matters and regulatory instability. Inconsistent or confusing signals can detract from safety. Thus, care must be taken when considering establishment of an Inspector General or other agency change, that authority is clearly delineated and properly circumscribed.

(1) Legislative Proposals to Create an Independent Inspector General. S. 1769, S. 908, and S. 100 would each create an independent Office of Inspector General for the NRC, headed by an individual appointed by the President and confirmed by the Senate. To the extent that the functions of such an office are consistent with those comtemplated by the Inspector General Act of 1978 -- that is, responsibility for investigating waste, fraud and abuse within the agency or by its contractors -- the merits of such a measure can be most knowledgably addressed by the NRC in dialogue with the Congress. We understand S. 1769 to be such a measure, as are the Inspector General provisions of H.R. 3285 on which you also ask our comment.

S. 908 and S. 100, however, go well beyond the foregoing. As noted, S. 908 would assign to a newly-created independent Inspector General not only the functions now performed by NRC's Office of Inspector and Auditor (OIA), but also the functions

performed by the agency's Office of Investigations (OI). The Commissioners have unanimously opposed such a transfer of investigative functions for reasons which we believe are sound from a regulatory standpoint. The Office of Investigations performs functions for the Commission which are integral to the agency's exercise of its licensing and regulatory responsibility. We think it unwise for an agency charged with regulating nuclear power activities not to have control of a function needed for the exercise of that responsibility. As stated to the Subcommittee by Chairman Zech:

> "OI investigations are often important elements in our regulatory decisions and in our confidence in the adherence of licensees to requirements. By nature of its mission, OI must work closely with the NRC regulatory staff. An effective working relationship between OI and the staff is important because OI does not make judgments regarding public health and safety --instead it produces investigatory information which is useful to those who are responsible for making regulatory decisions."

Given those regulatory realities, the Commission should not be deprived of its authority to set the priorities for and exercise control over OI's investigative resources -- and, of course, be fully accountable for the proper discharge of that authority.

We also oppose the creation of an Inspector General having the additional responsibility of performing safety-related functions, as provided in S. 100 (i.e., reviewing safety procedures and proposing safety regulations). We strongly believe that the responsibility for nuclear safety regulation should reside in a single regulatory body. A contrary course is a prescription for divided regulatory authority, confusion and safety uncertainty.

In sum, we think it important to assure that, if an independent Office of Inspector General is created for the NRC, it be empowered to exercise only those responsibilities which are accorded an Inspector General under the Inspector General Act of 1978.

(2) Nuclear Safety Board. S. 14 proposes creation of an independent Nuclear Safety Board, headed by a three-member collegial body appointed by the President and confirmed by the Senate. Such a board would be given a broad mandate to investigate events at nuclear facilities, to review regulatory activities, and to recommend improvements in licensing and regulatory practices.

It is evident that the responsibilities of such a board would duplicate or split functions performed by the Commission and its staff, thus creating yet another layer of regulatory oversight. We believe this to be a seriously mistaken course.

Experience shows that duplicative and potentially conflicting layers of reviews and inspection do not ensure safety -- indeed, they can detract from safety by blurring what should be clear lines of regulatory authority and responsibility.

Proposals for an independent Nuclear Safety Board are derived from the National Transportation Safety Board (NTSB) and its investigation of aircraft, rail, highway and pipeline accidents. There are, however, significant differences between the activities covered by the NTSB and those conducted by NRC licensees -- including the more limited regulation of the former, as contrasted to the pervasive NRC regulation of nuclear activities. There is no reason, moreover, why this function cannot be effectively discharged by the regulatory agency. The Independent Investigation Program (IIP), which the NRC has established and which has worked well in its initial operation, shows that this can be done competently and objectively.

There are compelling reasons for maintaining incident investigation responsibility within the nuclear regulatory agency itself: its discharge will require the technical resources of the regulatory agency; its exercise has direct regulatory effects; and its housing in a separate agency places a burden on ready communication among regulators and with the regulated industry -- all of which runs counter to the interests of nuclear safety. We think it anomalous, moreover, to set up yet another collegial body for nuclear regulatory oversight when wide-spread

dissatisfaction with the collegial structure of the existing agency has led to serious consideration of its reorganization.

We believe, in summary, that a Nuclear Safety Board with a mandate such as that provided in S. 14 -- and in the even more expansive Nuclear Safety Board provisions of H.R. 3285 -- would create either a parallel or a divided NRC -- both of which would compromise nuclear safety interests. Moreover, we do not believe that any of the currently introduced Nuclear Safety Board bills fail to compromise these safety interests. Further, we believe such a course to be unnecessary in light of the promising incident investigation steps which NRC has recently taken -- steps which have worked well in their initial exercise and which should be allowed to prove their continuing effectiveness.

We thus oppose creation of an independent Nuclear Safety Board irrespective of whether NRC remains structured as it now is or becomes a single administrator agency.

Reform of the Licensing and Regulatory Process

Organizational reform of NRC should not be considered in isolation from the underlying regulatory program. Indeed, the two are closely interrelated. The failings of an outmoded process for licensing nuclear power plants have, in a real sense, sowed the "dragon's teeth" for many of the problems that confront the NRC and the nuclear industry today. That process, moreover,

stands as a barrier to any disposition on the part of utilities to consider nuclear power as a practicable choice if energy and demand factors require significant additional generating capacity between now and the end of the century -- as surely will be the case. Accordingly, there is a need for Congress to come to grips with basic deficiencies in the licensing and regulatory process at the same time it takes up structural reform.

The failings and frustrations of the current process have been extensively and painfully documented before the Congress -- including prior hearings of this Subcommittee. The process now given statutory sanction by the Atomic Energy Act of 1954 is unstable in its requirements, unpredictable in its application, open-ended in its cost exposure -- and it provides for public participation at a time and in a manner which badly serves public, industry and regulatory needs. The current licensing regime -- fashioned 30 years ago to accommodate a "design-as-you-go" approach to nuclear power plant construction -- simply makes no sense today.

What is equally frustrating is that the needed process reforms are also well known and broadly supported -- by the industry and its regulators, and within the Congress where are exhaustive hearing record has been complied. Yet these reforms are perpetually "next in line" on the legislative priority list.

Design standardization is the keystone to process reform.

Both nuclear proponents and thoughtful critics agree that standardization offers the greatest promise for a more effective nuclear power program and regulatory process. And the NRC has consistently advocated that path. But standardization needs a supportive legislative framework if it is to become a commercial reality -- a framework providing for preapproval of standard designs, advance approval of sites, and consolidated construction permits and operating licenses for applications that reference standardized designs.

The Nuclear Regulatory Commission is taking steps to bring about administrative reform of the current process and we welcome and support its initiative. The NRC's recently issued "Policy Statement on Nuclear Powerplant Standardization" and its stated intention to move forward with the adoption of implementing licensing regulations are long-awaited positive steps. Nonetheless, we believe -- as does the Commission -- that legislative action supportive of standardization is also required. Only legislation can give standardization and related process reforms the national policy imprint and continuity that their full implementation will require. We urge, therefore, that Congress move on this front as well.

Conclusion

The American public has demanding expectations of the nuclear power program -- and rightly so. It expects exemplary

operational performance from the nuclear power industry; effective oversight by its regulators; and a regulatory process which is supportive of both requisites.

The nuclear industry is fully committed to meeting its performance obligations, through individual efforts and the collective efforts represented by INPO, EPRI, and NUMARC.

Effective regulation requires both a workable NRC organizational structure and a sensible regulatory process -- one matched to safety requirements, technical capabilities, and the nation's needs. In our view, legislative changes will be necessary to bring this about. However, we urge the Congress to resist piecemeal changes and consider comprehensive procedural as well as structural changes.

We welcome the opportunity to submit our views on the steps to be taken and we offer our continuing cooperation in their further Congressional consideration.

STATEMENT

ALAN L. DEAN
CHAIRMAN

STANDING PANEL ON EXECUTIVE ORGANIZATION AND MANAGEMENT

OF THE
NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

BEFORE
THE SUBCOMMITTEE ON NUCLEAR REGULATION

OF THE
SENATE ENVIRONMENTAL AND PUBLIC WORKS COMMITTEE

ON
VARIOUS BILLS RELATING TO THE ORGANIZATION AND STRUCTURE OF THE NATIONAL REGULATORY COMMISSION, NAMELY: S.14, S.100, S. 908, S, 1769, S. 1770 AND H.R. 3285

October 29, 1987

Mr. Chairman and Members of the Subcommittee:

My name is Alan L. Dean. I am the Chairman of the Standing Panel on Executive Organization and Management of the National Academy of Public Administration and a former Deputy Assistant Director for Management of the Office of Management and Budget.

I am accompanied by Dr. Harold Seidman, a member of the Academy's Panel, former Assistant Director for Management and Organization of the Bureau of the Budget, and author of the leading book on government organization.

As you know, the National Academy of Public Administration is a non-profit organization chartered by Congress and charged with providing independent advice on matters relating to the management of the government. Although the Academy as an institution rarely takes positions on specific issues of management, it is prepared through its panels and expert members to provide advice to the committees of the Congress and to government agencies, when asked to do so. It is in the capacity of individual members of the Academy that Dr. Seidman and I appear before you today.

My testimony today will address three major organizational proposals relating to the Nuclear Regulatory Commission set forth in various bills now before the Subcommittee. These are: (1) the replacement of the present five-member Commission by a single Director or Administrator as provided for in S. 1770 and H.R. 3285 (2) the creation of an independent Nuclear Safety Board as set forth in S. 14 and H.R. 3285 and the establishment of an Office of Inspector General as contemplated by S. 1769, S. 908, S. 100, and H.R. 3285. Although related, these proposed changes in the arrangements for administering the statutes relating to nuclear energy regulation are not mutually exclusive and each can be considered to some degree on its own merits.

Creating a Nuclear Energy Regulatory Agency under a Single Executive.

Both S. 1770 and H.R. 3285 would replace the existing five-member Commission with an independent agency of the executive branch headed by a single administrator appointed by the President and confirmed by the Senate. Dr. Seidman and I believe that this reform would make possible substantial improvements in the effectiveness with which the nuclear energy regulatory statutes are carried out and would produce significant administrative savings. We

hope the Congress will act favorably on this legislation. We base our view on a number of considerations.

It is rarely possible in matters of government organization to set forth generally applicable rules, but one which has stood the test of time is that boards and commissions are not well suited for the conduct of executive functions. Virtually every study of executive branch management has criticized the effectiveness of full-time boards as a mechanism for the decisive, consistent, and timely carrying out of substantive programs established by law. This has been especially true in the safety area. The General Accounting Office in its April 1987 report to the House Energy and Commerce Committee on the Consumer Product Safety Commission pointed out that seven out of nine health and safety regulatory agencies are under the direction of single administrators, including the Environmental Protection Agency, the Federal Aviation Administration and the National Highway Traffic Safety Administration.

In addition to the NRC only the Consumer Product Safety Commission among safety regulatory agencies is headed by a board, and it too has been sharply criticized for its structural and administrative inadequacies. In fact, the House committee on Energy and Commerce is now considering bills to reorganize the CPSC, and the GAO has recommended that the Commission be replaced by a single administrator. Dr. Seidman and I endorsed this change in a hearing which took place on October 27, 1987.

Whenever commissions or boards have been charged with administrative functions, including the conduct of licensing or enforcement programs, their performance has been disappointing. NRC is no exception to this generalization. Commissions tend to be indecisive and to generate delays; debilitating frictions often develop within commissions; vacancies often exist for long periods; quorum problems can arise; they are expensive to staff and support; and they obscure accountability. Such factors constitute compelling arguments for placing vital health and safety functions such as those relating to nuclear energy under the direction of a single official.

It is also possible for three or five commissioners to agree to policies for which no single administrator would be willing to accept responsibility. Accountability to the Congress inevitably is blurred when a commission is involved, and it becomes more difficult to pin point who is to blame for failures in the administration of the laws governing a program.

It is often argued that a commission with three or five members will provide for a desirable diversity of views, discourage precipitous or poorly conceived actions, provide enhanced stability and somehow reduce vulnerability to political or interest group pressures. There is little or no evidence to support these contentions, which can best be described as wishful thinking. The detailed analysis of what has occurred in the Consumer Product Safety Commission set forth in the GAO report of April 1987 is most illustrative on this score.

Over the past several years, I have had considerable exposure to the operations of the NRC and the views of its senior staff. I found much evidence that the Commission was a retarding factor in the taking of agency actions. Most senior staff were of the view that a single administrator would be conducive to stronger leadership and a more decisive disposition of issues facing the agency. A single administrator would also be able to address a number of internal management issues arising out of changes in program priorities.

It should also be noted that in 1980 an investigation of the Three Mile Island incident conducted by Mitchell Rogovin, a member of the National Academy of Public Administration, led to a recommendation that the Commission be replaced by a single administrator. This report to the NRC Commissioners and to the public included the observation that the Commission "is not so badly managed as not managed at all." The investigators also stated that "In our opinion, the Commission is incapable, in its present configuration, of managing a comprehensive national safety program for existing nuclear powerplants adequate to ensure public health and safety. A radical reorganization of the Commission's structure and management is called for, now."

From my eight years as an Associate Administrator of the Federal Aviation Administration, I can add that it would be virtually impossible to carry out the Federal Aviation Act without a single official clearly in charge of the agency.

We are concerned with the number of Assistant Administrators established in the bills as posts filled by the President subject to confirmation by the Senate. We see no reason why more than two officials should be Presidential appointees, which is the number provided for in the case of the Federal Aviation Administration. A larger number places burdens on both the President and the Senate, complicates the maintenance continuity in senior officials, and does little to enhance accountability.

Establishing a Nuclear Energy Safety Board

Both S. 14 and H.R. 3285 would establish an Nuclear Energy Safety Board as an independent agency. The Board would be composed of three members appointed by the President, by and with the advice and consent of the Senate. Members would serve six-year, overlapping terms.

A good case can be made for the use of an independent board to investigate events or conditions involving nuclear energy facilities, materials, or management. Because the factors which contribute to an incident or unsafe condition might directly involve the NCR or its successor agency, the involvement of an independent board provides assurance that all factors will be considered and impartially assessed. The agency charged with the development of standards, licensing and inspection would not be in the position of investigating itself.

An excellent precedent in the use of a safety board exists in the field of transportation. When the Congress approved the Department of Transportation Act in 1966, it placed all safety functions in the Secretary, who in turn delegated most of the individual authorities to the modal administrations, such as the Federal Aviation Administration. At the same time a National Transportation Safety Board was established with powers independent of the Secretary. Since the activation of DOT in 1967 the NTSB has investigated major accidents in all forms of transportation and has made determinations as to probable cause. The Board may at any time advise the Secretary of conditions which constitute hazards to transportation safety, and it may make such specific recommendations for corrective actions as it deems desirable. All this is done in public and the arrangement has on the whole worked well.

In establishing a safety board care should be taken to minimize duplication between the administrative agency and the board. The board needs enough staff to conduct investigations, hold hearings, develop reports, and analyze trends or repetitive situations calling for remedial measures. It should avoid the temptation to manage the administrative agency or to attempt to develop standards on regulations. Fortunately, the annual budgets provide an effective mechanism to restrain any tendency of a safety board to stray from its essential mission.

We therefore recommend that the congress establish a Nuclear Energy Safety Board along the lines contemplated by S. 14 and H.R. 3285.

Office of Inspector General

Several of the bills before the Committee provide for the establishment of an Office of Inspector General either in the present NCR or in a new Nuclear Energy Regulatory Agency headed by a single administrator. In all cases the Inspector General would be appointed by the President and be subject to Senate Confirmation.

The Inspector General proposals would extend to the agency charged with nuclear energy regulation a statutory office which has been established in recent years in most executive departments and several independent agencies. Efforts are now being made to create inspectors general in smaller agencies.

There is not enough experience with the efficacy of inspectors general in small agencies to enable us to recommend the creation by law of such an official in either the Commission or single headed agency at this time. We know that the experience of the U.S. Synthetic Fuels Corporation with a statutory inspector general was not reassuring, but it is difficult to generalize from one case. In any event we do not believe that the creation of an Office of Inspector General would address specifically the critical management problems now confronting the NRC.

In summary, it is our view that if a nuclear regulatory agency is created under a single administrator, and if a safety board is also established, the Congress will have provided a basis for important progress in the management of nuclear energy safety programs.

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100TH CONGRESS
1ST SESSION

S. 14

To amend the Energy Reorganization Act of 1974 to create an independent Nuclear Safety Board.

IN THE SENATE OF THE UNITED STATES

JANUARY 6, 1987

Mr. BYRD for Mr. BIDEN (for himself, Mr. ROCKEFELLER, Mr. KERRY, and Mr. BUMPERS) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To amend the Energy Reorganization Act of 1974 to create an independent Nuclear Safety Board.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Independent Nuclear Safety Board Act of 1987".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that there is a great need for—

(1) vigorous investigation of events at facilities, or involving materials, licensed or otherwise regulated by the Nuclear Regulatory Commission; and

(2) continual review and assessment of licensing and other regulatory practices of the Nuclear Regulatory Commission, which assessment may result in conclusions critical of the Nuclear Regulatory Commission or its officials.

(b) The purpose of this Act is to establish an Independent Nuclear Safety Board which shall promote nuclear safety by—

(1) conducting independent investigations of events at facilities, or involving materials, licensed or otherwise regulated by the Nuclear Regulatory Commission;

(2) reviewing and assessing the licensing and other regulatory practices of the Nuclear Regulatory Commission;

(3) recommending to the Nuclear Regulatory Commission improvements in licensing and related regulatory practices; and

(4) informing the Congress of its investigation findings and recommendations.

ESTABLISHMENT OF NUCLEAR SAFETY BOARD

SEC. 3. Title II of the Energy Reorganization Act of 1974 (Public Law 93–438; 42 U.S.C. 5841 et seq.) is

amended by adding at the end thereof the following new section:

"INDEPENDENT NUCLEAR SAFETY BOARD

"SEC. 212. (a) There is established an Independent Nuclear Safety Board (hereafter in this section referred to as the 'Board').

"(b)(1) The Board shall be composed of 3 members appointed by the President, by and with the advice and consent of the Senate, from among respected experts in the field of commercial nuclear energy with a demonstrated competence and knowledge relevant to the independent investigative and prescriptive functions of the Board. No more than 2 members of the Board shall be of the same political party. Not later than 90 days after the date of the enactment of this section, the President shall submit such nominations for appointment to the Board.

"(2) Any vacancy in the membership of the Board shall be filled in the same manner in which the original appointment was made.

"(3) No member of the Board shall have any significant financial relationship in any firm, company, corporation, or other business entity engaged in activities regulated by the Commission either as licensee or contractor, or have such a relationship within the two years preceding his appointment.

"(c)(1) The Chairman and Vice Chairman of the Board shall be designated by the President. The Chairman and Vice Chairman may be reappointed to such offices.

"(2) The Chairman shall be the chief executive officer of the Board and shall, subject to such policies as the Board may establish, exercise the functions of the Board with respect to—

"(A) the appointment and supervision of personnel employed by the Board;

"(B) the organization of any administrative units established by the Board; and

"(C) the use and expenditure of funds.

The Chairman may delegate any of the functions under this paragraph to any other member or to any appropriate employee or officer of the Board.

"(3) The Vice Chairman shall act as Chairman in the event of the absence or incapacity of the Chairman or in case of a vacancy in the office of Chairman.

"(d)(1) Except as provided under paragraph (2), the members of the Board shall serve for terms of 6 years. Members of the Board may be reappointed.

"(2) Of the members first appointed—

"(A) one shall be appointed for a term of 2 years;

"(B) one shall be appointed for a term of 4 years; and

"(C) one shall be appointed for a term of 6 years; as designated by the President at the time of appointment.

"(3) Any member appointed to fill a vacancy occurring before the expiration of the term of office for which such member's predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of the member's term until a successor has taken office.

"(4) Any member of the Board may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

"(e) Two members of the Board shall constitute a quorum, but a lesser number may hold hearings.

"(f) The Board shall have the following functions and authorities:

"(1)(A)(i) The Board shall investigate those events at any facility, or involving any materials, licensed or otherwise regulated by the Commission, which the Board determines to be significant because of possible adverse effects on the health or safety of the public or because such events could be the precursors of events that may adversely affect the health or safety of the public.

"(ii) The Board may request the Commission to make an investigation of the events described in divi-

sion (i) and to report its findings to the Board in a timely fashion. Whenever the Commission concludes such an investigation, the Board may analyze the findings of the Commission for the purpose of making its own conclusions and recommendations.

"(B) The purpose of any Board investigation under this paragraph shall be—

"(i) to ascertain information concerning the circumstances of the event involved, and its implications for the public health and safety;

"(ii) to determine whether such event is part of a pattern of similar events at facilities, or involving any materials, licensed or otherwise regulated by the Commission which could adversely affect the public health or safety or which could be the precursor of events which could adversely affect the public health or safety; and

"(iii) to provide such recommendations to the Commission for changes in licensing, safety regulations and requirements, and other regulatory policy as may be prudent or necessary.

"(C) For the purpose of this paragraph, the term 'event' shall include an action or failure to act by any person, including the Commission as an organization and its staff, or a continuing series of actions or fail-

ures to act by any such person, including operational failures, that the Board determines to have a potentially adverse effect on public health as provided in this paragraph.

"(2) The Board shall have access to and may systematically analyze—

"(A) operational data from any facility, or involving any materials, licensed or otherwise regulated by the Commission to determine whether there exist certain patterns of events that indicate safety problems; and

"(B) operational data of the Commission including personnel and files.

"(3) The Board may conduct special studies pertaining to the nuclear safety at any facility, or involving any materials, licensed or otherwise regulated by the Commission.

"(4) The Board may evaluate suggestions received from the scientific and industrial communities, and from the interested public, on specific measures to improve safety at facilities, or involving materials, licensed or otherwise regulated by the Commission.

"(5)(A) The Board shall recommend to the Commission those specific measures that should be adopted to minimize the likelihood that events will occur at any

facility, or involving materials, licensed or otherwise regulated by the Commission which could adversely affect the public health or safety. The Commission shall respond in writing to the recommendations of the Board within 120 days of receipt of such recommendations. Such written response shall detail specific measures adopted by the Commission in response to such recommendations, and explanations for its inaction on recommendations it chose to reject.

"(B) The recommendations of the Board made pursuant to subparagraph (A) shall also be sent to Congress.

"(6)(A) For purposes of investigations, the Board shall establish reporting requirements which shall be binding upon—

"(i) persons who operate, design, supply, maintain, or are otherwise involved with the operation or construction of, facilities licensed or otherwise regulated by the Commission; and

"(ii) persons who process, store, transport, use, or possess materials licensed or otherwise regulated by the Commission.

"(B)(i) The information which the Board may require to be reported under this paragraph may include any materials designated as classified material pursuant

to the Atomic Energy Act of 1954, or any materials designated as safeguards information and protected from disclosure under section 147 of the Atomic Energy Act of 1954.

"(ii) Information received by the Board shall be made available to the public in accordance with the applicable provisions of subsections (a) and (b) of section 306 of the Independent Safety Board Act of 1974 (49 U.S.C. 1905).

"(7)(A) The Board or, on the authorization of the Board, any member thereof, may, for the purpose of carrying out the provisions of this section, hold such hearings and sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such evidence as the Board or an authorized member may find advisable.

"(B)(i) Subpenas may be issued only under the signature of the Chairman or any member of the Board designated by him and shall be served by any person designated by the Chairman or any member. The attendance of witnesses and the production of evidence may be required from any place in the United States at any designated place of hearing in the United States.

"(ii) Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

"(iii) Any person who willfully neglects or refuses to qualify as a witness, or to testify, or to produce any evidence in obedience to any subpena duly issued under the authority of this paragraph shall be fined not more than $5,000, or imprisoned for not more than 6 months, or both. Upon certification by the Chairman of the Board of the facts concerning any willful disobedience by any person to the United States attorney for any judicial district in which the person resides or is found, the attorney may proceed by information for the prosecution of the person for the offense.

"(8) The Board shall issue periodic reports which shall be made available to the Congress, and to Federal, State, and local government agencies concerned with safety at facilities, or involving materials, licensed or otherwise regulated by the Commission. Upon request, such reports shall be made available to other interested persons. Such reports shall contain recommendations of specific measures to reduce the likelihood of occurrence of nuclear events similar to those investigated by the Board and of corrective steps to enhance or improve safety conditions at such facilities investi-

gated by the Board and other facilities as considered appropriate by the Board.

"(9) In accordance with the Civil Service laws and regulations, the Chairman of the Board is authorized to hire staff and employ consultants for the purpose of carrying out the functions and duties of the Board.

"(g)(1) There are hereby transferred to the Board—

"(A) all functions of the Office for the Analysis and Evaluation of Operational Data relating to the functions of the Board described in subsection (f); and

"(B) such personnel from the Office for the Analysis and Evaluation of Operational Data as the Director of the Office of Management and Budget determines are necessary to carry out the functions described in subsection (f).

"(2) There are hereby authorized to be appropriated for each of the fiscal years 1988, 1989, 1990, 1991, 1992, and 1993 the sum of $5,000,000.

"(3) The Board shall terminate at the end of fiscal year 1993.".

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II

100TH CONGRESS
1ST SESSION

S. 100

To establish an Office of Inspector General in the Nuclear Regulatory Commission, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 6, 1987

Mr. D'AMATO introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To establish an Office of Inspector General in the Nuclear Regulatory Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Improved Nuclear Standards Act".

ESTABLISHMENT OF AN OFFICE OF INSPECTOR GENERAL IN THE NUCLEAR REGULATORY COMMISSION

SEC. 2. (a) The Inspector General Act of 1978 is amended—

(1) by inserting "the Nuclear Regulatory Commission," before "the Small Business Administration" in section 2(1);

(2) by redesignating subparagraphs (M) and (N) of section 9(a)(1) as subparagraphs (N) and (O), respectively;

(3) by inserting after subparagraph (L) of such section the following new subparagraph:

"(M) of the Nuclear Regulatory Commission, the offices of that agency referred to as the 'Office of Inspector and Auditor' and the 'Office of Investigations';";

(4) by striking out "or" after "Transportation" in section 11(1) and inserting in lieu thereof a comma;

(5) by inserting "or the Chairman of the Nuclear Regulatory Commission," before "as the case" in such section;

(6) by inserting "the Nuclear Regulatory Commission," before " the Small Business Administration" in section 11(2); and

(7) by inserting after section 8A the following new section:

"SPECIAL PROVISIONS RELATING TO THE INSPECTOR GENERAL OF THE NUCLEAR REGULATORY COMMISSION

"SEC. 8B. (a) Each individual appointed to the position of Inspector General of the Nuclear Regulatory Commission

shall, in addition to having the qualifications specified in the first section of 3(a), have expertise in nuclear safety.

"(b) The Inspector General of the Nuclear Regulatory Commission shall, in addition to the authority provided by the other provisions of this Act, have the authority and responsibility to—

"(1) review all nuclear safety procedures carried out by the Nuclear Regulatory Commission to ensure that the best available nuclear safety standards are used;

"(2) propose regulations to the Nuclear Regulatory Commission for the purpose of ensuring the public safety; and

"(3) prepare and transmit an annual report to the Congress concerning the adequacy of nuclear safety procedures used in the United States.".

ADDITIONAL DUTIES FOR THE INSPECTOR GENERAL OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY

SEC. 3. The Inspector General of the Federal Emergency Management Agency shall review standards and procedures for emergency evacuation plans for nuclear power facilities, and both the FEMA Inspector General and the Director of FEMA shall make recommendations directly to the Congress concerning the adequacy of, and the implementation of, such standards and procedures.

TESTS OF FEDERAL EMERGENCY MANAGEMENT AGENCY NUCLEAR ACCIDENT EVACUATION PLANS AND SUSPENSION OF LICENSE BY THE NUCLEAR REGULATORY COMMISSION FOR COMMERCIAL NUCLEAR FACILITIES WITH UNSAFE EVACUATION PLANS

SEC. 4. (a)(1) The Federal Emergency Management Agency shall conduct an annual test of the evacuation plan for each operating nuclear power facility in the United States, including facilities not licensed by the Nuclear Regulatory Commission.

(2) As a part of the annual test under paragraph (1) for each operating commercial nuclear power facility licensed under chapter 10 of the Atomic Energy Act of 1954, the Federal Emergency Management Agency shall submit a report to the Nuclear Regulatory Commission which shall—

(A) certify to the Nuclear Regulatory Commission that the evacuation plan for such facility assures public safety; or

(B) report findings to the Nuclear Regulatory Commission that the evacuation plan for such facility does not assure public safety.

(3) The Nuclear Regulatory Commission shall suspend the license of any facility subject to a report under paragraph (2)(B) until such time as the facility can certify that the evacuation plan for such facility assures public safety. A facility

subject to a suspended license under paragraph (2)(B) may request a retest from the Federal Emergency Management Agency for purposes of certification of public safety at any time after suspension of the license.

(b)(1) Prior to the grant of a license required for any commercial nuclear power facility licensed pursuant to chapter 10 of the Atomic Energy Act of 1954, the Federal Emergency Management Agency shall certify to the Nuclear Regulatory Commission that the evacuation plan for such commercial nuclear power facility assures public safety.

(2) A license shall not be granted by the Nuclear Regulatory Commission to a commercial nuclear power facility unless such facility receives a certification as provided in paragraph (1).

(c) The owner of a commercial nuclear power facility subject to the provisions of this section shall be responsible for the payment of any non-Federal costs associated with any test of the evacuation plan for such facility carried out under this section.

○

Calendar No. 301

100TH CONGRESS
1ST SESSION

S. 908

[Report No. 100–150]

To amend the Inspector General Act of 1978.

IN THE SENATE OF THE UNITED STATES

APRIL 3 (legislative day, MARCH 30), 1987

Mr. GLENN (for himself, Mr. ROTH, Mr. CHILES, Mr. PRYOR, Mr. SASSER, Mr. HEINZ, Mr. LEVIN of Michigan, Mr. RUDMAN, Mr. BINGAMAN, Mr. MITCHELL, Mr. STEVENS, Mr. NUNN, Mr. TRIBLE, Mr. COHEN, and Mr. KARNES) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

AUGUST 7 (legislative day, AUGUST 5), 1987

Reported by Mr. GLENN, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Inspector General Act of 1978.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That this Act may be cited as the "Inspector General Act Amendments of 1987".

CONFORMATION OF AUTHORITIES OF EXISTING OFFICES OF INSPECTORS GENERAL

SEC. 2. (a) Section 2(1) of the Inspector General Act of 1978 is amended to read as follows:

"(1) to conduct and supervise audits and investigations relating to the programs and operations of the establishments listed in section 11(2);".

(b) Section 9(a)(1) of such Act is amended—

(1) by striking out subparagraph (I);

(2) by redesignating subparagraphs (M) and (N) as subparagraphs (O) and (P), respectively;

(3) by redesignating subparagraphs (J) through (L) as subparagraphs (K) through (M), respectively;

(4) by redesignating subparagraphs (E) through (H) as subparagraphs (G) through (J), respectively;

(5) by inserting after subparagraph (D) the following new subparagraphs:

"(E) of the Department of Energy, the Office of Inspector General (as established by section 208 of the Department of Energy Organization Act);

"(F) of the Department of Health and Human Services, the Office of Inspector General (as established by title II of Public Law 94-505);"; and

(6) by inserting after subparagraph (M) (as redesignated by paragraph (3) of this subsection) the following new subparagraph:

"(N) of the Railroad Retirement Board, the Office of Inspector General (as established by section 23 of the Railroad Retirement Act of 1974);".

(c) Section 11 of such Act is amended—

(1) by inserting "Energy, Health and Human Services," after "Education," each place it appears in paragraphs (1) and (2);

(2) by striking out "Community Services," in paragraph (1);

(3) by striking out "the Community Services Administration," in paragraph (2);

(4) by inserting "or the Chairman of the Railroad Retirement Board," before "as the case may be" in paragraph (1); and

(5) by inserting "the Railroad Retirement Board," after "National Aeronautics and Space Administration," in paragraph (2).

(d)(1)(A) Section 208 of the Department of Energy Organization Act is repealed.

(B) The table of contents in the first section of such Act is amended by striking out the item relating to section 208.

(2) Title II of Public Law 94–505 is repealed.

(3) Section 23 of the Railroad Retirement Act of 1974 is repealed.

(e) The transfer of functions under the amendments made by subsection (b) shall not affect any individual, who on the date of enactment of this Act, is serving as the Inspector General of the Department of Energy, the Department of Health and Human Services, or the Railroad Retirement Board. Any such individual shall continue to serve in such position until such individual dies, resigns, or is removed from office in accordance with the Inspector General Act of 1978.

UNIFORM SALARIES FOR INSPECTORS GENERAL

SEC. 3. (a) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraphs:

"Inspector General, Department of Commerce.

"Inspector General, Department of the Interior.

"Inspector General, Agency for International Development.

"Inspector General, Environmental Protection Agency.

"Inspector General, General Services Administration.

"Inspector General, National Aeronautics and Space Administration.

"Inspector General, Railroad Retirement Board.

"Inspector General, Small Business Administration.".

(b) Section 5316 of such title is amended by striking out the paragraphs relating to—

(1) the Inspector General of the Department of Commerce;

(2) the Inspector General of the Department of the Interior;

(3) the Inspector General of the Agency for International Development;

(4) the Inspector General of the Community Services Administration;

(5) the Inspector General of the Environmental Protection Agency;

(6) the Inspector General of the General Services Administration;

(7) the Inspector General of the National Aeronautics and Space Administration; and

(8) the Inspector General of the Small Business Administration.

ESTABLISHING AN OFFICE OF INSPECTOR GENERAL IN THE DEPARTMENT OF THE TREASURY, THE FEDERAL EMERGENCY MANAGEMENT AGENCY, THE NUCLEAR REGULATORY COMMISSION, AND THE OFFICE OF PERSONNEL MANAGEMENT

SEC. 4. (a) Section 9(a)(1) of the Inspector General Act of 1978 (as amended by section 2(b) of this Act) is further amended—

(1) by redesignating subparagraphs (O) and (P) (as redesignated by paragraph (2) of section 2(b) of this Act) as subparagraphs (S) and (T), respectively;

(2) by redesignating subparagraph (N) (as added by paragraph (6) of section 2(b) of this Act) as subparagraph (R);

(3) by redesignating subparagraphs (K), (L), and (M) (as redesignated by paragraph (3) of section 2(b) of this Act) as subparagraphs (L), (N), and (O), respectively;

(4) by inserting after subparagraph (J) (as redesignated by paragraph (4) of section 2(b) of this Act) the following new subparagraph:

"(K) of the Department of the Treasury, the office of that department referred to as the 'Office of Inspector General', and, notwithstanding any other provision of law, that portion of each of the offices of that department referred to as the 'Office of Internal Affairs, Bureau of Alcohol, Tobacco, and Firearms', the 'Office of Internal Affairs, United States Customs Service', the 'Office of Inspections, Internal Revenue Service', and the 'Office of Inspections, United States Secret Service' which is engaged in internal audit activities;";

(5) by inserting after subparagraph (L) (as redesignated by paragraph (3) of this subsection) the following new subparagraph:

"(M) of the Federal Emergency Management Agency, the office of that agency referred to as the 'Office of Inspector General';"; and

(6) by inserting after subparagraph (O) (as redesignated by paragraph (3) of this subsection) the following new subparagraphs:

"(P) of the Nuclear Regulatory Commission, the offices of that commission referred to as the 'Office of Inspector and Auditor' and the 'Office of Investigations';

"(Q) of the Office of Personnel Management, the offices of that agency referred to as the 'Office of Inspector General', the 'Insurance Audits Division, Retirement and Insurance Group', and the 'Analysis and Evaluation Division, Administration Group';".

(b)(1) Section 11(1) of such Act (as amended by section 2(c) of this Act) is further amended—

(A) by striking out "or Transportation or" and inserting in lieu thereof "Transportation, or the Treasury;"

(B) by striking out ", or the Director of the United States Information Agency" and inserting in lieu thereof a semicolon and "the Director of the Federal Emergency Management Agency, the Office of Personnel Management, or the United States Information Agency;"; and

(C) by inserting "the Nuclear Regulatory Commission or" before "the Railroad Retirement Board" (as added by section 2(c)(4) of this Act).

(2) Section 11(2) of such Act (as amended by section 2(c) of this Act) is further amended—

(A) by striking out "or Transportation" and inserting in lieu thereof "Transportation, or the Treasury;";

(B) by inserting "the Federal Emergency Management Agency," after "the Environmental Protection Agency,"; and

(C) by inserting "the Nuclear Regulatory Commission, the Office of Personnel Management," after "the National Aeronautics and Space Administration,".

(c) The Inspector General Act of 1978 is amended by inserting after section 8A the following new sections:

"SPECIFIC PROVISION CONCERNING THE NUCLEAR REGULATORY COMMISSION

"SEC. 8B. The Chairman of the Commission may delegate the authority specified in the second sentence of section 3(a) to another member of the Nuclear Regulatory Commission, and shall not delegate such authority to any other officer or employee of the Commission.

"SPECIAL PROVISIONS REGARDING THE DEPARTMENT OF THE TREASURY

"SEC. 8C. (a) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of the Treasury shall have general oversight responsibility for the internal investigations performed by the Office of Internal Affairs of the Bureau of Alcohol, Tobacco and Firearms, the Office of Internal Affairs of the United States Customs Service, the Office of Inspections of the Internal Revenue Service, and the Office of Inspections of the

United States Secret Service. The head of each such office shall periodically report to the Inspector General the significant investigative activities being carried out by such office.

"(b) Notwithstanding subsection (a), the Inspector General of the Department of the Treasury may conduct an investigation of any officer or employee of such Department if—

"(1) the Secretary of the Treasury or the Deputy Secretary of the Treasury requests the Inspector General to conduct an investigation;

"(2) the investigation concerns senior officers or employees of the Department of the Treasury, including officers appointed by the President, members of the Senior Executive Service, and individuals in positions classified at grade GS–15 of the General Schedule or above or classified at a grade equivalent to such grade or above such equivalent grade; or

"(3) the investigation involves alleged notorious conduct or any other matter which, in the opinion of the Inspector General, is especially sensitive or of departmental significance.

"(c) If the Inspector General of the Department of the Treasury initiates an investigation under subsection (b), and the officer or employee of the Department of the Treasury subject to investigation is employed by or attached to a

bureau or service referred to in subsection (a), the Inspector General may provide the head of the office of such bureau or service referred to in subsection (a) with written notice that the Inspector General has initiated such an investigation. If the Inspector General issues a notice under the preceding sentence, no other investigation shall be initiated into the matter under investigation by the Inspector General and any other investigation of such matter shall cease.

"(d)(1) Notwithstanding the last two sentences of section 3(a), the Inspector General of the Department of the Treasury shall be under the authority, direction, and control of the Secretary of the Treasury with respect to audits or investigations, or the issuance of subpenas, which require access to information concerning—

"(A) ongoing criminal investigations or proceedings;

"(B) sensitive undercover operations;

"(C) the identity of confidential sources, including protected witnesses;

"(D) deliberations and decisions on policy matters, including documented information used as a basis for making policy decisions, the disclosure of which could reasonably be expected to have a significant influence on the economy or market behavior; or

"(E) other matters the disclosure of which would constitute a serious threat to national security or to the protection of any person authorized protection by section 3056 of title 18, United States Code.

"(2) With respect to the information described in paragraph (1), the Secretary of the Treasury may prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpena, after the Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpena, if the Secretary of the Treasury determines that such prohibition is necessary to preserve the confidentiality of or prevent the disclosure of any information described in paragraph (1).

"(3) If the Secretary of the Treasury exercises any power under paragraph (1) or (2), the Secretary of the Treasury shall notify the Inspector General of the Department of the Treasury in writing of such exercise. Within 30 days after receipt of any such notice, the Inspector General of the Department of the Treasury shall transmit a copy of such notice to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives, and to other appropriate committees or subcommittees of Congress, together with any comments the Inspector General deems appropriate.".

(d) Section 5315 of title 5, United States Code (as amended by section 3(a) of this Act) is further amended by adding at the end thereof the following new items:

"Inspector General, Department of the Treasury:

"Inspector General, Federal Emergency Management Agency.

"Inspector General, Nuclear Regulatory Commission.

"Inspector General, Office of Personnel Management.".

REQUIREMENTS AND PROTECTIONS FOR AUDIT AND INVESTIGATION UNITS

SEC. 5. (a) The Inspector General Act of 1978 (as amended by section 4(c) of this Act) is further amended by inserting after section 8C the following new section:

"SPECIFIC REQUIREMENTS FOR FEDERAL ENTITIES

"SEC. 8D. (a) As used in this section—

"(1) the term 'Federal entity' means any Government corporation (within the meaning of section 103(1) of title 5, United States Code), any Government controlled corporation (within the meaning of section 103(2) of such title), or any other entity in the Executive branch of the Government, or any independent regulatory agency, but does not include—

"(A) an establishment (as defined in section 11(2) of this Act) or part of an establishment;

"(B) the Executive Office of the President;

"(C) the Central Intelligence Agency;

"(D) the General Accounting Office;

"(E) the Department of Justice; or

"(F) any entity in the judicial or legislative branches of the Government, including the Administrative Office of the United States Courts and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol;

"(2) the term 'designated Federal entity' means ACTION, Amtrak, the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System, the Board for International Broadcasting, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Election Commission, the Federal Home Loan Bank Board, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the Na-

tional Labor Relations Board, the National Science Foundation, the Panama Canal Commission, the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the Tennessee Valley Authority, the United States International Trade Commission, and the United States Postal Service;

"(3) the term 'head of the Federal entity' means the director, administrator, president, chairman, or chief executive officer of a Federal entity, or any other body designated by statute as the head of a Federal entity;

"(4) the term 'head of the designated Federal entity' means the director, administrator, president, chairman, or chief executive officer of a designated Federal entity, or any other body designated by statute as the head of a designated Federal entity;

"(5) the term 'internal audit unit' means a component of a Federal entity which carries out audits or investigations, or both, of the programs and operations of such entity, but does not include a component that carries out audits or investigations as an integral part of the conduct of the programs and operations of such entity; and

"(6) the term 'internal audit unit director' means the head of an internal audit unit.

"(b) After the date which is 180 days after the date of enactment of this section, there shall be established in each designated Federal entity an internal audit unit. The head of the designated Federal entity shall transfer to the internal audit unit established in such entity the offices, units, or other components, and the functions, powers, or duties thereof, that such head determines are properly related to the functions of the internal audit unit and would, if so transferred, further the purposes of this section. There shall not be transferred to an internal audit unit any program operating responsibilities.

"(c) The internal audit unit director shall be appointed by the head of the designated Federal entity in accordance with the applicable laws and regulations governing appointments within the designated Federal entity.

"(d) Each internal audit unit director shall report to and be under the general supervision of the head of the designated Federal entity, but shall not report to, or be subject to supervision by, any other officer or employee of such designated Federal entity. The head of the designated Federal entity shall not prevent or prohibit the internal audit unit director from initiating, carrying out, or completing any

audit or investigation, or from issuing any subpena during the course of any audit or investigation.

"(e) If an internal audit unit director is removed from office or is transferred to another position or location within a designated Federal entity, the head of the designated Federal entity shall promptly communicate the reasons for any such removal or transfer to both Houses of Congress.

"(f)(1) The Chief Postal Inspector of the United States Postal Service shall be the internal audit unit director of the United States Postal Service, and for purposes of this section, shall report to, and be under the general supervision of, the Postmaster General. The Chief Postal Inspector may be removed from office or transferred to another position or location within the United States Postal Service if the Postmaster General issues a written order stating the reason for such action and two-thirds of the Governors of the United States Postal Service vote to ratify such order. If the Chief Postal Inspector is removed or transferred in accordance with this subsection, the Postmaster General shall promptly notify both Houses of Congress of the reasons for such removal or transfer.

"(2) For purposes of paragraph (1), the term 'Governors' has the same meaning as in section 102(3) of title 39, United States Code.

"(g)(1) Sections 4, 5, 6, and 7 of this Act (other than sections 6(a)(7) and 6(a)(8)) shall be applied to each internal audit unit, internal audit unit director, designated Federal entity, and head of the designated Federal entity (as such terms are defined in subsection (a)) by substituting—

"(A) 'internal audit unit director' for 'Inspector General';

"(B) 'designated Federal entity' for 'establishment';

"(C) 'internal audit unit' for 'Office'; and

"(D) 'head of the designated Federal entity' for 'head of the establishment'.

"(2) In addition to the other authorities specified in this Act, an internal audit unit director is authorized to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the internal audit unit and to obtain the temporary or intermittent services of experts or consultants or an organization thereof, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within the designated Federal entity.

"(3) The provisions of subsection (d) of section 8C (other than the provisions of subparagraphs (A), (B), (C), and (E) of subsection (d)(1)) shall apply to the internal audit

unit director of the Board of Governors of the Federal Reserve System and the Chairman of the Board of Governors of the Federal Reserve System in the same manner as such provisions apply to the Inspector General of the Department of the Treasury and the Secretary of the Treasury, respectively.

"(h) Within one year after the date of enactment of this section, and on October 31 of each calendar year thereafter, the head of each Federal entity which is not a designated Federal entity shall prepare and transmit to the Director of the Office of Management and Budget a report which—

"(1) states whether there has been established in the Federal entity an internal audit unit that meets the requirements of this section;

"(2) specifies the actions taken by the Federal entity to ensure that audits are conducted of its programs and operations in accordance with the standards for audit of governmental organizations, programs, activities, and functions issued by the Comptroller General of the United States, including a list of each audit report completed by a Federal or non-Federal auditor during the reporting period; and

"(3) summarizes any matters relating to the personnel, programs, and operations of the Federal entity referred to prosecutive authorities, including a summa-

ry description of any preliminary investigation conducted by or at the request of the Federal entity concerning these matters, and the prosecutions and convictions which have resulted.".

(b) Section 410(b) of title 39, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (6);

(2) by striking out the period at the end of paragraph (7) and inserting in lieu thereof a semicolon;

(3) by striking out "The" in paragraph (8) and inserting in lieu thereof "the";

(4) by striking out the period at the end of paragraph (8) and inserting in lieu thereof a semicolon and "and"; and

(5) by adding at the end thereof the following new paragraph:

"(9) the provisions of section 8D of the Inspector General Act of 1978.".

PROVISIONS TO ENSURE UNIFORMITY AND RELIABILITY OF INSPECTOR GENERAL REPORTS

SEC. 6. (a) Section 5(a) of the Inspector General Act of 1978 is amended—

(1) by striking out "and" at the end of paragraph (5); and

(2) by striking out paragraph (6) and inserting in lieu thereof the following:

"(6) a list, subdivided according to subject matter, of each audit report completed by the Office during the reporting period, together with a summary of the significant reports;

"(7) a detailed statistical analysis of audit reports, depicting in tables arranged by audit status information concerning—

"(A) the number of audit reports in each audit status;

"(B) the number of such reports for which an audit determination was not made within 6 months of the date of completion of such reports;

"(C) where applicable, the amounts of ineligible costs, ineligible costs that were disallowed, unsupported costs, and unsupported costs that were disallowed; and

"(D) where applicable, the amount of disallowed costs returned to, or offset by, the Government;

"(8) a summary of each significant audit report completed before the commencement of the reporting period and identified under paragraph (7)(B), together with an explanation of the reason the audit determina-

tion was not made during the period described in such paragraph;

"(9) a description of, and an explanation of the reasons for, any significant revised audit determinations made during the reporting period; and

"(10) information concerning any significant audit determination with which the Inspector General is in disagreement.".

(b) Section 5(b) of such Act is amended by inserting "(1)" after "containing" and by inserting before the period a comma and "(2) a list of each audit report made by the establishment's Office of Inspector General which was not resolved within one year after the date on which an audit determination was made on such report, (3) an explanation of the reason such audit was not resolved, and (4) for each such audit report, the amount of disallowed costs that are under administrative or judicial appeal and the amount of any disallowed costs returned to, or offset by, the Government".

(c) Section 5(c) of such Act is amended by adding at the end thereof the following new sentence: "The head of each establishment shall also make copies of the report of such head required under subsection (b) available to the public upon request and at a reasonable cost.".

(d) Section 5 of such Act is further amended by adding at the end thereof the following new subsection:

"(f) As used in this section—

"(1) the term 'ineligible cost' means an incurred cost that is questioned by the Office of Inspector General because of an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds;

"(2) the term 'unsupported cost' means an incurred cost that is questioned by the Office of Inspector General because the Office found that, at the time of the audit, such cost was not supported by adequate documentation;

"(3) the term 'disallowed cost' means an ineligible cost or unsupported cost that the management of an establishment has concluded, in an audit determination, should not be charged to the Federal Government;

"(4) the term 'audit determination' means the evaluation by the management of an establishment of the findings and recommendations included in an audit report and the issuance of a written final decision by management concerning its response, including corrective actions concluded to be necessary, to such findings and recommendations;

"(5) the term 'audit resolution' means the completion of all corrective actions that the management of an

establishment has concluded, in an audit determination, are necessary with respect to the findings and recommendations included in an audit report, and, in the event that the management of an establishment concludes no corrective action is necessary, 'audit resolution' occurs when an audit determination has been reached; and

"(6) the term 'audit status' includes the following six categories:

"(A) audits for which the audit report was completed before the commencement of the reporting period and for which—

"(i) the audit determination was not made by the end of such period;

"(ii) the audit determination was made during such period and for which audit resolution has not occurred; and

"(iii) the audit determination was made during such period and for which audit resolution has occurred; and

"(B) audits for which the audit report was completed during the reporting period and for which—

"(i) the audit determination was not made by the end of such period;

"(ii) the audit determination was made during such period and for which audit resolution has not occurred; and

"(iii) the audit determination was made during such period and for which audit resolution has occurred.".

(e) Section 3512(b)(2) of title 31, United States Code, is amended by adding at the end thereof the following: "Such standards shall include (A) a definition of audit resolution consistent with section 5(f)(5) of the Inspector General Act of 1978, and (B) a standard to ensure that an audit determination will be made on each audit report within 6 months after the completion of such report, in the case of an audit performed by a Federal auditor, and within 6 months after receipt by the executive agency responsible for the program concerned, in the case of each audit performed by a non-Federal auditor. No order, circular, or directive prescribed by the Director of the Office of Management and Budget shall include an inconsistent definition or standard with respect to audit resolution.".

OATH ADMINISTRATION AUTHORITY

SEC. 7. Section 6(a) of the Inspector General Act of 1978 is amended—

(1) by redesignating paragraphs (5) through (8) as paragraphs (6) through (9), respectively, and

(2) by inserting after paragraph (4) the following new paragraph:

"(5) to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the functions assigned by this Act, which oath, affirmation, or affidavit when administered or taken by or before an investigator or such other employee of an Office of Inspector General designated by the Inspector General shall have the same force and effect as if administered or taken by or before an officer having a seal;".

APPROPRIATION ACCOUNTS

SEC. 8. Section 1105(a)(25) of title 31, United States Code, is amended to read as follows:

"(25) a separate appropriation account for appropriations for each Office of Inspector General established by the Inspector General Act of 1978.".

DISCLOSURE OF TAX RETURNS AND RETURN INFORMATION

SEC. 9. Section 5(e)(3) of the Inspector General Act of 1978 is amended by striking out "Nothing" in the first sentence and inserting in lieu thereof "Except to the extent pro-

vided in section 6103(f) of the Internal Revenue Code of 1986, nothing".

Calendar No. 301

100TH CONGRESS
1ST SESSION

S. 908

[Report No. 100–150]

A BILL

To amend the Inspector General Act of 1978.

AUGUST 7 (legislative day, AUGUST 5), 1987
Reported with an amendment

100TH CONGRESS
1ST SESSION

S. 1769

To establish an Office of Inspector General in the Nuclear Regulatory Commission.

IN THE SENATE OF THE UNITED STATES

OCTOBER 8 (legislative day, SEPTEMBER 25), 1987

Mr. SIMPSON introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

---

A BILL

To establish an Office of Inspector General in the Nuclear Regulatory Commission.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

ESTABLISHMENT OF AN OFFICE OF INSPECTOR GENERAL IN THE NUCLEAR REGULATORY COMMISSION

SEC. 2. (a) The Inspector General Act of 1978 is amended—

(1) by inserting "the Nuclear Regulatory Commission," before "the Small Business Administration" in section 2(1);

(2) by redesignating subparagraphs (M) and (N) of section 9(a)(1) as subparagraphs (N) and (O), respectively;

(3) by inserting after subparagraph (L) of such section the following new subparagraph:

"(M) of the Nuclear Regulatory Commission, the offices of that agency referred to as the 'Office of Inspector and Auditor';

(4) by striking out "or" after "Transportation" in section 11(1) and inserting in lieu thereof a comma;

(5) by inserting "or the Chairman of the Nuclear Regulatory Commission," before "as the case" in such section; and

(6) by inserting "the Nuclear Regulatory Commission," before "the Small Business Administration in section 11(2).

100TH CONGRESS
1ST SESSION

S. 1770

To reorganize the functions of the Nuclear Regulatory Commission by abolishing the Commission and, in its place, establishing the Nuclear Regulation Agency, in order to promote more effective and efficient nuclear licensing and regulation.

IN THE SENATE OF THE UNITED STATES

OCTOBER 8 (legislative day, SEPTEMBER 25), 1987

Mr. SIMPSON introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

---

A BILL

To reorganize the functions of the Nuclear Regulatory Commission by abolishing the Commission and, in its place, establishing the Nuclear Regulation Agency, in order to promote more effective and efficient nuclear licensing and regulation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Nuclear Regulation Reorganization Act of 1987".

DECLARATION OF PURPOSES

SEC. 2. The Congress declares that—

(1) a clear and coordinated national policy for the development, use, and regulation of atomic energy for peaceful purposes, in accordance with the objectives of the Atomic Energy Act of 1954, as amended, is in the best interest of the general welfare and the common defense and security of this Nation; and

(2) to best achieve these objectives, improvements in the effectiveness and efficiency of the current approach to the licensing and regulation of atomic energy for peaceful purposes are required.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) the term "Agency" means the Nuclear Regulation Agency established under section 4; and

(2) the term "Director" means the Director of the Nuclear Regulation Agency appointed under section 5(a).

ESTABLISHMENT OF NUCLEAR REGULATION AGENCY

SEC. 4. (a) There is established as an independent regulatory agency of the Government the Nuclear Regulation Agency (hereinafter in this Act referred to as the "Agency"). The Agency shall succeed the Nuclear Regulatory Commission in existence on the day before the effective date of this Act.

(b) For purposes of chapter 9 of title 5 of the United States Code, the Agency is an independent regulatory agency.

OFFICERS

SEC. 5. (a) The Agency shall be administered by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall carry out all functions transferred to the Agency by this Act and shall have authority and control over all personnel, programs, and activities of the Agency.

(b) There shall be in the Agency a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Director shall perform such functions as the Director shall prescribe. The Deputy Director shall act for and perform the functions of the Director during the absence or disability of the Director, or in the event of a vacancy in the office of the Director.

(c) There shall be in the Agency not to exceed three Assistant Directors, one each for nuclear reactor regulation, nuclear material safety, and research, who shall be appointed by the President, by and with the advice and consent of the Senate. The Assistant Directors shall perform such functions as the Director shall prescribe. The Director shall designate the order in which the Assistant Directors shall act for and perform the functions of the Director during the absence or

disability of the Director or the Deputy Director, or in the event of vacancies in all of those offices.

(d)(1) Section 5313 of title 5, United States Code, is amended by adding at the end thereof the following:

"Director, Nuclear Regulation Agency.".

(2) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following:

"Deputy Director, Nuclear Regulation Agency.".

(3) Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following:

"Assistant Administrators, Nuclear Regulation Agency.".

ABOLITION OF NUCLEAR REGULATORY COMMISSION

SEC. 6. The Nuclear Regulatory Commission is hereby abolished. Sections 201, 203, 204, 205, and 209 of the Energy Reorganization Act of 1974, as amended, are repealed.

TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL

SEC. 7. The personnel employed and the assets, liabilities, contracts, property, records, and unexpended balances or appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available, or to be made available, in connection with the Nuclear Regulatory Commission and the functions transferred under this Act, are,

subject to section 1531 of title 31, United States Code, transferred to the Agency for appropriate allocation.

EFFECT ON PERSONNEL

SEC. 8. (a) The transfer of personnel pursuant to this Act shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of such transfer.

(b) Any person who, on the day before the effective date of this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Agency to a position having duties comparable to those performed immediately preceding his appointment, shall continue to be compensated in his new position at not less than the rate provided for his previous position for the duration of his service in his new position.

INCIDENTAL TRANSFERS

SEC. 9. (a) The Director of the Office of Management and Budget, at such time or times as the Director shall provide may make such determinations as may be necessary with regard to the transfer of the Nuclear Regulatory Commission pursuant to this Act and the transfer of functions under this Act, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriation, authorizations, allocations, and other funds held, used, arising

from, available, or to be made available in connection with the Nuclear Regulatory Commission and the functions transferred under this Act, as may be necessary to carry out the provisions of this Act. The Director of the Office of Management and Budget shall provide for such further measures and dispositions as may be necessary to effectuate the purposes of this Act.

(b) After consultation with the Director of the Office of Personnel Management, the Director of the Office of Management and Budget is authorized, at such time as the Director of the Office of Management and Budget provides, to make such determination as may be necessary with regard to the transfer of positions within the Senior Executive Service in connection with the transfer of the Nuclear Regulatory Commission pursuant to this Act and the transfer of functions under this Act.

SAVINGS PROVISIONS

SEC. 10. (a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, the Nuclear Regulatory Commission, or any court of competent jurisdiction, in the performance of functions which are transferred under this Act; and

(2) which are in effect at the time this Act takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the President, the Director, a court of competent jurisdiction, or by operation of law.

(b)(1) The provisions of this Act shall not affect any proceedings pending at the time this Act takes effect before the Nuclear Regulatory Commission with respect to functions transferred, may be continued before the Agency. Orders may be issued in such proceeding, appeals may be taken therefrom, and payments may be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings may continue in effect until modified, terminated, superseded, or repealed by the Administrator, by a court of competent jurisdiction, or by operation of law.

(2) The Director is authorized to promulgate regulations providing for the orderly transfer of proceedings continued under paragraph (1) of the Agency.

(c) Except as provided in subsection (e)—

(1) the provisions of this Act shall not affect actions commenced prior to the date this act takes effect, and

(2) in all such actions proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this Act had not been enacted.

(d) No action or other proceeding commenced by or against any officer in his official capacity as an officer of the Nuclear Regulatory Commission shall abate by reason of the enactment of this Act. No cause of action by or against the Nuclear Regulatory Commission or functions transferred under this Act, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this Act. Causes of action or actions or other proceedings with respect to the Nuclear Regulatory Commission, may be asserted by or against the United States or an official of the Agency, as may be appropriate, and, in an action pending when this Act takes effect, the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provision of this subsection.

(e) If, before the date on which this Act takes effect, the Nuclear Regulatory Commission, or any officer thereof in the official capacity of such officer, is a party to an action, and under this Act such action shall be continued with the Director or other appropriate official of the Agency, as the case may be, substituted or added as a party.

(f) Orders and actions of the Director in the exercise of the functions transferred under this Act shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by the Nuclear Regulatory Commission in exercising such functions immediately

preceding their transfer. Any statutory requirements relating to notice, hearings, actions upon the record, or administrative review that apply to the exercise of such functions transferred under this Act shall apply to the exercise of such functions by the Director.

REFERENCE

SEC. 11. With respect to any function transferred under this Act and exercised after the effective date of this Act, any reference in any other law, or in any rule, regulation, certificate, directive, instruction, or other official paper in force on the effective date of this Act to the Nuclear Regulatory Commission shall be deemed to refer and apply to the Agency or the Director.

EFFECTIVE DATE

SEC. 12. This Act shall take effect one hundred and twenty days after the date of its enactment, or on such earlier date as the President may prescribe and publish in the Federal Register, except that any time on or after the date of the enactment of this Act, any of the officers provided for in section 5 may be nominated and appointed, as provided in this Act. Funds available to the Nuclear Regulatory Commission may, with the approval of the President, be used to pay the compensation and expenses of any officer appointed pursuant to this section and other transitional and planning expenses associated with the establishment of the Agency until such time as funds for such purposes are otherwise available.

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